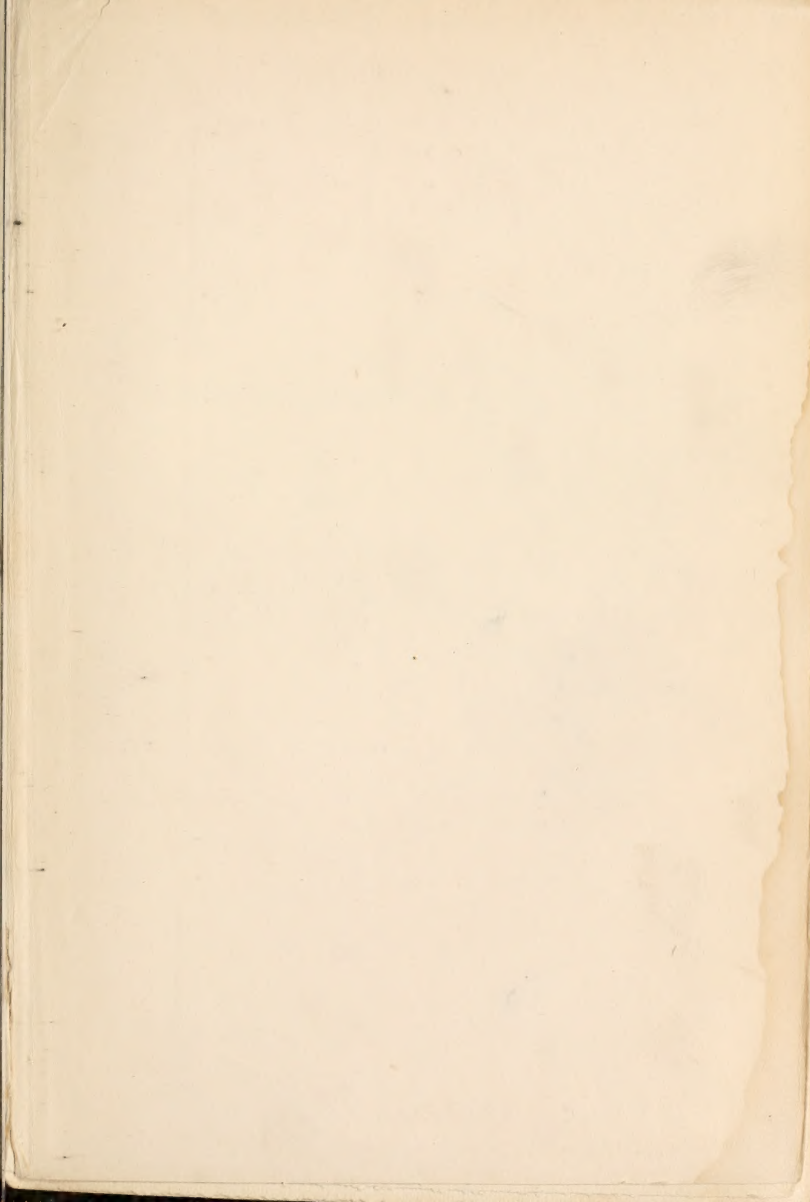


THE REVOLUTION IN VIRGINIA

By H.J.Eckenrode

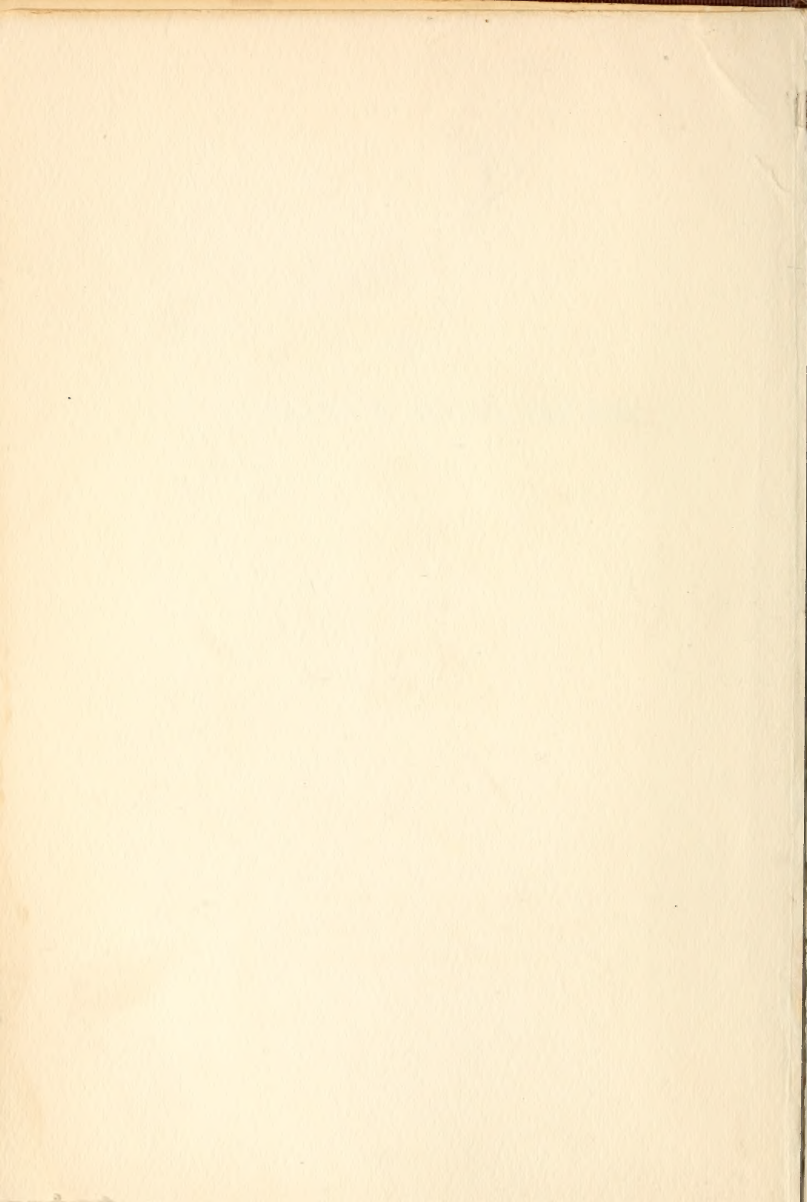
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THE REVOLUTION IN VIRGINIA



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By H. J. ECKENRODE, Ph.D.

ASSOCIATE PROFESSOR OF ECONOMICS AND HISTORY
IN RICHMOND COLLEGE



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THE REVOLUTION IN VIRGINIA

CHAPTER I

BEGINNING OF THE REVOLUTION

THE American Revolution was a movement with two distinct aspects. On one side it was marked by the union of hitherto independent communities and the beginning of common institutions and of a common life. The other phase witnessed the progress of the revolt within the colonies themselves and the creation of their individual governments. The method of historians in treating of the Revolution generally has been to take the most striking incidents in the history of the colonies in the years immediately preceding 1776 and join them to an account of the workings of the Continental Congress and the campaigns of the Continental army. The internal growth of the new-made States is almost entirely ignored, probably because in some instances it is not well known. But in this stage of American history, when the national life was so feeble, the progress of events in Massachusetts and Virginia was more important than the deliberations of Congress. No adequate account has been given of the spiritual change which came over Massachusetts and Virginia in the Revolutionary epoch and which had such great influence on the development of the nation. Because the early history

of the individual States has not been well worked out, there are certain hiatuses in our histories, such, for instance, as the lack of an account of the origin of the Democratic Party. Historians give us the impression that it sprang full-grown from the head of Jefferson, that he was its creator. But the Democratic Party had come into existence in an undefined way before the great political genius of Jefferson laid hold of it and moulded it to his purposes. Jefferson was a Virginian and the Democratic Party as a political movement with real purposes was likewise a Virginia product; the story of its rise is one of the most interesting chapters of Revolutionary history.

In a brief analysis, the Revolution was the result of the clash between imperial expansion and colonial development—two forms of progressivism—just as the Puritan Revolution was the outcome of the conflict of expanding monarchy with the growing idea of popular rights, mainly expressed through religion. In Virginia the colonial constitution had become well defined before the middle of the eighteenth century. Based on the fine old principle of the Englishman's inherent right of self-government, it had acquired certain fixed positions without much reference to strict logic. It was really the result of a long contest; the history of Virginia, like that of the other colonies, is little more than a series of disputes with the royal governors, who served the colony greatly in some ways and in other ways were out of touch with colonial life and needs. Parliament exerted a variable control over the colonies, from time to time passing taxation-without-representation statutes, but generally leaving the provincials sufficiently alone to cause itself to be looked on admir-

ingly as the palladium of liberty. As a matter of fact, the causes of the Revolution were practical far more than theoretical. The colonies endured Parliamentary supervision so long as this was not too vigorous; customs laws were of small account while smuggling went unchecked. Only when the British government attempted to enforce its customs acts and ventured to impose other and burdensome taxes, like the Stamp Act, did the taxation-without-representation protest appear; then the provincials, with all of Englishmen's gravity in asserting a paradox, denied the Parliamentary right of taxation. If we think they may have been deficient in argument while right in principle, it should be remembered that the king's lawyers produced good precedents in the ship-money case in 1637. In a political struggle both sides always prove themselves right by any number of constitutional citations, but, nevertheless, the victory of one side carries with it far more right and happiness than the triumph of the other.

Opposition to the British government did not begin with the Stamp Act in 1765. Before this time the colony had on many occasions successfully resisted the royal authority; indeed a legislature noted for its independence had existed in Virginia since 1619. In 1635 this assembly forcibly sent the royal governor Harvey back to England because it resented his efforts to enlarge his powers. Virginia tardily and reluctantly acquiesced in the rule of Commonwealth and Protectorate, and, on the other hand, broke out in 1676 in open rebellion against its Cavalier governor, who sought to play the tyrant. Ten years later, in 1686, the House of Burgesses refused to allow the governor and council to lay a tax, and it did not favor the

establishment of a post-office in America by act of Parliament.

The high spirit of the Virginia assembly quickened in the eighteenth century with the colony's rapid growth in wealth, population, and culture. The governors of that period found themselves continually at odds with the House of Burgesses in attempting to secure votes of money; Dinwiddie even had difficulty in obtaining supplies for the French-and-Indian War. This dual government by royal governor and local assembly resulted in the attachment of certain constitutional powers to either party, with a neutral zone between, while outside of both loomed the vague, ill-defined claims of Parliament. The governor was selected by the king and represented him. Along with the ordinary executive routine, he appointed most of the colonial officials; called out the militia against the Indians and made treaties with them; suggested legislation and approved or vetoed bills, but with a final reservation to the Privy Council; sat as chief judge in the general court; and, finally, inducted clergymen of the established church into parishes — though he had not the power of appointing them. The governor's council, which acted in the threefold capacity of consulting executive body, the highest court and the upper chamber of the legislature, was appointed for life by the British Privy Council on the governor's nomination, and was generally under his influence. The House of Burgesses, the representative branch of the assembly, consisted of two members for each county and single members for boroughs. It initiated money bills in the manner of the House of Commons and was the most important and powerful branch of the

colonial government, successfully asserting its rights and privileges on many occasions in opposition to the governor and council.

With the increase of the number of counties in the eighteenth century and the rise of a large class of landed proprietors whose main public ambition took the form of representing fellow countrymen in Williamsburg, the House of Burgesses grew greatly in power and prestige. Virginia in its earlier period had been a more or less democratic community and it always contained a sturdy small-farmer class, tenacious of its self-respect. Lyon G. Tyler has pointed out that, while in New England the poor man was addressed as "goodman," in Virginia he insisted on his right to "mister."

But the eighteenth century saw the rise of a strong aristocracy, based on the possession of the comparatively valuable lands of the tidewater section tilled by white indentured servants and negro slaves. Ownership of great tracts of cleared lands and abundance of cheap labor enabled the planters, in spite of the wasteful agricultural system then in vogue, to raise large enough crops of tobacco to leave a considerable surplus above expenses. The settlers had gone from England to Virginia for the same reason that settlers go everywhere — to make a living. After the first hard age of settlement, when men struggled to subdue nature and lived and died toiling relentlessly, there succeeded a period of relaxation, enjoyment, and growing refinement, wherein the descendants of successful land-patentees and tobacco-growers gave themselves an English education, found pleasure in society and sport, and took to politics as a means of gaining

influence and distinction. And since the Virginia colonists, unlike those of New England, were fully in accord with the feelings of the majority of Englishmen, they were without dissenter ideas in religion or politics. It was natural, therefore, that they should take as their ideal of imitation the English country gentleman, whose thoughts and habits, considering the necessary differences between England and Virginia, they reproduced with remarkable fidelity. This planter class, generally fairly well informed for the times and enjoying considerable leisure, possessed great power among a poor and ignorant population: they took over almost as a right the local offices, and the ambition of the ablest or most pushing led them to the House of Burgesses.

The majority of planters did not, of course, profit by their opportunities. Many of them, in the fervor of their liking for English country life, merely wasted their means and leisure in sport and dissipation. Horse-racing for large stakes flourished in Virginia between 1730 and 1775, and at the beginning of the Revolution a considerable number of large landholders had ruined themselves by gambling and high living. Many estates were on the market. But the colonial system, with all its great drawbacks, offered a wonderful chance of development to ambitious and willing men. Politics was a respectable career, and not a business as it is so often nowadays; it invited the best men. The planter had a sufficient and tolerably secure income derived from his crops; he could give much time to reading and public affairs without private injury, because he usually had an overseer to superintend the labor of his slaves; and gradually there developed a race

of politicians remarkable for their combination of theoretical training with practical experience — men well read in English law and history, and, later, open to the great liberal tendencies of the middle eighteenth century. The liberal movement, which influenced America as well as western Europe, had the effect in Virginia of disturbing that deep-rooted idolatry of English institutions which had given birth to the Virginia aristocracy. A typical product of eighteenth-century liberalism in Virginia was George Mason, the broad-minded and capable thinker who wrote the constitution of 1776.

The House of Burgesses was largely made up of planters, who were Englishmen in feeling, but who nevertheless asserted the dignity and independence of the body in which they sat in opposition to attempts or imagined attempts of the British authorities to stretch their jurisdiction. They were reinforced about the middle of the century by another self-willed element actually hostile to the imperial government, the representatives from the new middle and western counties. This piedmont and mountain section was much more democratic in feeling and much less cultured and wealthy than the east, even for the standard of those days. The western or "upland" members for many years were too few and inexperienced to do more than vote with the controlling majority led by skilled politicians, but they were never quite in harmony with the tidewater and eventually asserted themselves successfully against it.

Several serious clashes with the royal government in the decade preceding the Stamp Act illustrated the growing independence and self-consciousness of the House of

Burgesses. When Governor Dinwiddie in 1753 attempted on his own initiative to levy a fee of a pistole for signing land patents, the Burgesses protested in the memorable and prophetic words of Richard Bland: "The rights of the subject are so secured by law, that they cannot be deprived of the least part of their property but by their own consent." The governor in reply claimed that he was acting according to the king's instructions and strictly within the king's rights over vacant lands, but the House refused to accept his explanation: it declared that those who paid the pistole fee would be regarded as betrayers of the people, and thereby established a precedent for securing uniformity through holding offenders up to public obloquy later used with great effect in suppressing Toryism. The British Privy Council, when appealed to as the final authority in the fee dispute, allowed the Burgesses to have their way. Before the passage of the Stamp Act the British government at times inclined to be almost too conciliatory towards the colonies.

It is probable that the House of Burgesses was mistaken in the pistole contention, for the title to vacant lands was unquestionably vested in the king, and the governor as the royal representative was hardly outside his rights in levying a fee. Still, it had not been demanded before, and the Virginians felt that advantage was being taken of a technical right to introduce a new and insidious custom and a possible precedent for future taxes.

This controversy was the prelude to a much more important dispute hinging on the king's power of interference with colonial legislation. The colonial constitution, as has been noted, recognized three powers in the state — king,

Parliament, and local assembly. The king's power was mainly, though not entirely, delegated to the governor, who received instructions from home outlining his policy; these instructions were regarded as law. Parliamentary authority was by general colonial consent limited to the regulation of commerce. Needless to say, the extensive right of regulating commerce when interpreted in the loose construction fashion might seem to sanction almost any stretch of governmental jurisdiction, but as a matter of fact Parliament was not inclined to be unduly vexatious before 1760. Most colonial ills flowed from other sources.

The assembly, which was the strictly local branch of government, exercised wider powers than modern law-making bodies — executive and judicial as well as legislative. At first the small upper house, representing a few allied families, held a dominating position, but as the colony grew in age and population the House of Burgesses more and more tended to become the important chamber. The council was Tory in feeling, while the Burgesses cherished the Whig tradition of English liberty, and its independent-minded leaders were bound to come into conflict with the British government as soon as the latter should attempt to stretch its prerogatives.

The first important controversy between colony and home government, however, did not result from Parliamentary taxation, but from the royal authority as exercised in colonial legislation. The Church of England establishment in Virginia, the miniature state church of the colony, furnished the occasion, and the conflict decided the long-debated question whether the control of the es-

tablishment lay finally with the assembly or the British officials. In 1758 the assembly passed an act which particularly affected the ministers of the established church and aroused their ire. This so-called "Twopenny Act" compounded debts and the salaries of officials, which were payable in tobacco by legal regulation, in money at the rate of twopence a pound. The measure was possibly necessary on account of the low price of tobacco and the weight of taxation due to the French-and-Indian War, then in progress, but the assembly had passed a similar law in 1755 and seemed about to establish a rule of scaling down salaries when tobacco was high without providing any compensation when it fell below the normal, as it frequently did. The state-supported clergy, who naturally objected to this heads-I-win-tails-you-lose system, appealed to England and succeeded in enlisting the services of the Bishop of London, the colonial diocesan. The bishop took up the cudgels in a letter denouncing the Virginia government.

The final stage in the passage of a colonial law was the king's assent, but the assembly hastened to put the Twopenny Act into effect upon securing the governor's approval, without waiting to hear from England, although the act altered a statute which the king had approved. In other words, the Virginia assembly dared to legislate on its own authority and in practical disregard of the king. The Bishop of London hinted that such action was in the nature of treason; it was at least not strictly constitutional. In answer to the bishop's letter two high-spirited Virginians, Landon Carter and Richard Bland, sprang to the defense of the assembly and there followed a merry war of pamphlets, in which John Camm, president of William and

Mary College, supported the side of the clergy. In this dispute the theory of the colonial constitution was first clearly defined by the chief writer participating, Richard Bland.¹

Richard Bland, of Prince George, deserves a word of mention, since he more than any other man was the author of the Revolution in Virginia. He was born in 1710 and died in 1776, spanning the whole preliminary period of the Revolution in his mature manhood. His education was of peculiar value for these critical decades from 1755 to 1775; after a preliminary course in William and Mary he studied history and law at the University of Edinburgh, and was probably the best constitutional lawyer in the colonies. He saw with great clearness and astuteness on just what grounds the legal resistance to the British policy might be effectively placed and most of the remonstrances emanating from the House of Burgesses were his work. In personality Bland was of that type of Virginian which is best illustrated by the figure of George Mason, that type considered characteristically Virginian, — half practical farmer, half classical scholar and lawyer; genial, well-mannered, personally somewhat untidy and careless of clothes.

Bland defended the assembly's action in setting aside a law approved by the king on the plea that action was sometimes necessary before the king's will could be learned. "*Salus populi, suprema lex,*" he impudently quoted. In brief, the colony had to consider its own best interests, even at the expense of constitutional forms. But the royal council, to which Virginia's action was not especially

¹ H. J. Eckenrode's *Separation of Church and State in Virginia*, 24 et seq.

palatable, "disallowed," that is, vetoed the Twopenny Act, and left the clergy the remedy of suing in the courts for the difference between their money commutations and their salaries in tobacco according to the prices current in 1758. Several ministers took advantage of this decision to bring suit and some judgments were obtained. One of the cases came up in Hanover Court in 1763, with the parish minister, Maury, the plaintiff. Patrick Henry, then an obscure young lawyer, represented the defendants, who were the vestry. In the speech delivered on this occasion, Henry boldly asserted Bland's doctrine, put forward three years earlier, that the assembly had the right to pass necessary legislation without interference from England. He even went so far as to declare, in terms that simply thrilled his audience, that the king in vetoing a reasonable and beneficial measure had forfeited the right to his subjects' obedience. This speech, which is generally regarded as the beginning of the Revolutionary movement in Virginia, actually marks the end of an agitation lasting for five years. Henry played Luther to Bland's Erasmus, carrying to their conclusion the principles which the constitutional lawyer had outlined in his pamphlet of 1760.

As it happened, the seed fell on prepared ground. The once solidly Episcopalian Hanover County was now full of dissenters, and Presbyterians largely manned the jury, which brought in a nominal verdict of one penny damages. It proved the ruin of the clerical cause. Virginia rang with Henry's name and the great body of people, who had hitherto viewed the matter with indifference, now took sides against the preachers. This outburst of enthusiasm led in later times to an obscuring of the actual issues

involved, and Henry was presented somewhat in the light of a tribune combating class privilege. In truth, however, the Twopenny Act had been devised by the ruling clique in the House of Burgesses, which would have been inconveniently taxed if the ministers had been paid according to the letter of the law. The dissenters did play a part, but it was subordinate. Henry's real importance in the case consisted in the *coup* by which he turned a quarrel of the House of Burgesses and the courts into a general political issue. It was Henry's great work, as the "Parsons' Cause" first showed, to enlist the body of Virginia people in the Revolutionary movement, which, without him, would have taken a different direction.

The clergy were defeated in the Virginia courts by the popular clamor raised by Henry; the British Privy Council also ruled against them on some technicality when appeals were carried to that body. Though the dispute had thus ended in the complete discomfiture of the clergy, the war of pamphlets continued for several years longer; John Camm, the clerical leader, exchanged fire again and again with Bland and Carter. Camm believed that the control of the Virginia establishment belonged properly to the king, not to the assembly; and this unpopular theory, along with the clergy's unsuccessful appeal from the Virginia courts to the Privy Council, tended to alienate many persons from the state church and foster the growth of dissent in eastern Virginia. Presbyterians and Baptists now appeared in numbers in even the most conservative counties.

Bland, in his later pamphlets in the Twopenny case, and in his "Inquiry into the Rights of the British Colonies,"

published in 1766, advanced beyond his first position, until he came to assert that all men born under an English government are subject only to laws made with their own consent.¹ In his Stamp Act pamphlet of 1766 he ingeniously outlined the distinction between the external government of England and the internal government of the assembly and between external and internal taxation, basing the colonial right to internal self-taxation on the common law, which follows the Englishman around the world, as well as on specific grants in royal charters. He defined, probably more clearly than any other colonial writer, the difference between the external authority of Parliament to pass acts for the regulation of commerce and the internal power of the assembly to levy any tax it might see fit, which distinction has survived in the American Constitution of 1787. This difference between "external" and "internal" government, rather ridiculous to Charles Townshend and not altogether convincing to-day, was an ingenious effort of the colonial mind to offer some real objection in law to the encroachments of the British ministry. From the Pistole Fee to 1776 Bland was busy in occupying defensive positions against England, and these were none the less effective that they sometimes happened to be novel.

Opinion in Virginia over the "Parsons' Cause" had been practically unanimous except for the parsons, who naturally viewed the constitution in another light. But in 1765, with the crisis brought on by the Stamp Act, party differences began to appear for the first time. On this occasion the middle and western sections rose to a place of influence never afterwards lost. The country beyond the Blue Ridge

¹ *Colonel Dismounted*, 21a.

was being rapidly settled by non-English races — Germans and Scotch-Irish — who had little of the Virginian reverence for Anglican institutions. The Presbyterian and democratic Scotch-Irish were reinforced by the piedmont country between the tidewater and the mountains, which had also been affected by dissent and democracy. Counties were being formed, and all that the new section needed was a vigorous and self-assertive leader. At length he appeared.

Before Patrick Henry's début in the assembly in 1765, Virginia was ruled by a coterie of eastern members — an astute, far-seeing, and experienced group of politicians, of whom the chief was John Robinson, speaker of the House of Burgesses and treasurer of the colony. Robinson belonged to the type which controls a conservative community; he was well connected, rich, polished, genial, and possessed of fair mental powers. He ruled *inter pares* by virtue of his popularity and a certain force of character. This group led by Robinson had governed with considerable efficiency and usually managed to overreach the governor and get their way with the home administration. But in 1764 they had been appalled by the declaratory act preceding the Stamp Act, which laid down the doctrine of the Parliamentary right of taxing the colonies. The House of Burgesses registered a dignified though emphatic protest, but Parliament, in disregard of colonial objections, passed the Stamp Act in the following year, 1765. Patrick Henry took his seat in the House as a member for Louisa at the May session of 1765, when the news of the act was fresh.

Robinson and his group had long held undisturbed pos-

session of the House of Burgesses, but Henry, instead of containing himself in the presence of the silk-stockinged and self-important gentlemen from the tidewater, as might have been expected of a newcomer ignorant of the legislative "ropes," signalized his entry by assuming the championship of popular measures. A good opportunity stood at hand, but one which only a man of nerve would take. The ruling clique in Virginia, like all ruling cliques, could not entirely refrain from abusing a long lease of power. John Robinson partly owed his commanding place to an accommodating disposition, for it had been his habit to lend the public funds to friends on their personal security. As he was a man of large wealth for the times, the colony apparently did not run much risk of loss by this procedure, while a number of free-living, money-spending politicians and planters profited by the use of the treasury as a bank until Robinson became involved for a great amount.

The situation finally became so serious that the speaker and his friends devised a plan of securing specie from England and lending it to planters on land security; this would have enabled Robinson to transfer to the treasury the securities he held for the public money loaned. Henry boldly fell athwart the scheme,¹ and, according to Jefferson, defeated it, though the journal shows that the bill actually passed the House of Burgesses and was lost in the council. In the debate on the loan-office Henry gained a valuable ally in Richard Henry Lee, another ambitious politician of radical predilections, who succeeded in bringing about an investigation of the treasury. This cut-and-dried performance resulted in Robinson's vindication for

¹ William Wirt's *Life of Patrick Henry*, 53.

the time being, but on his death in 1766 a defalcation of more than one hundred thousand pounds came to light. Nevertheless, the parties implicated looked out for themselves so cleverly that they were not called to account, and Robinson, being dead, could not protect himself. A large part of his estate was sold for the benefit of the colony, which was not entirely reimbursed. The names of the borrowers never came to light, but the scandal had some effect on popular opinion and assisted in paving the way for the rise of a *novus homo*.

The loan-office was quickly crowded into the background by weightier measures, for at this same session of 1765 Patrick Henry took the lead in opposition to the Stamp Act. He precipitated a sensational crisis by suddenly introducing in the House a set of resolutions which openly and indignantly denied the right of Parliament to tax the colonies. It was the best-judged move of his whole wonderful career, and, in effect, the beginning of the American Revolution. At this time the colonies had taken no stand on the taxation question and their future action was uncertain, yet, if the right of taxation was not to be conceded, definite and emphatic protest was imperative. With all deference for modern American writers who make out such a good case for the British government, it should be observed that the Stamp Act, no matter on what excellent legal grounds it might stand, was a genuine measure of oppression. It was a subtle tax, affecting almost every relation of life. If it had been tamely submitted to, any governmental tyranny might have been expected. The plea of levying a tax on America for colonial defense should not blind us to the obvious intention of the British gov-

ernment also to milk the fat American cow for its own benefit.

The boldness of the resolutions and the violence of Henry's speech alarmed the circle of eastern planters, who were as much opposed to the Stamp Act as the orator, but who preferred to carry on their opposition in the time-honored method of respectful petition. At a later date and in a period of glorification of the Revolution, it was claimed that Henry won a victory over the "court" or British faction in the House of Burgesses. As a matter of fact, no English party existed in Virginia at this time or afterwards. The nearest approach to such a party was the council, which was closely allied to the governor, but the council's influence had been steadily declining for some years and had practically disappeared by the Revolution. Certainly no English party had a place in the House of Burgesses, if by that term is meant a group willing to subordinate the colony to the will of the British government. The leaders acting against Henry to defeat his resolutions were Speaker Robinson, Edmund Pendleton, Peyton Randolph, Robert Carter Nicholas, Richard Bland, and George Wythe, all of whom with the exception of Robinson became active revolutionists a decade later. The speaker, it is true, stood near the governor, Fauquier, and was, so to speak, in touch with the home government, but it is almost certain that he would have sided with his associates if he had been living in 1775, since he had taken the lead in protests and in the first committee of correspondence. Assertion of colonial rights was nothing new to the House of Burgesses; it had always been a singularly independent body. It had thwarted Governor Dinwiddie

consistently, it had asserted itself in the "Parsons' Cause" and in the Pistole Fee, and in 1764 it had memorialized against the declaratory act preceding the Stamp Act. Landon Carter, George Wythe, Richard Bland, Peyton Randolph, and others of the so-called "court" party formed the committee to draw the protest. No view could be more mistaken than that Henry originated the spirit of resistance to British claims in the Virginia House of Burgesses; that spirit had always existed.

But if he did not initiate the opposition, he did show the wisdom of immediate and emphatic action. With his unrivaled faculty for seizing the psychological moment, Henry rightly judged that the time had passed for respectful representations to the "best of kings" and that the hour of rough and vigorous action had arrived. The speech he made in defense of his resolutions was startling and seditious in the extreme. After a stormy debate of two days, May 29-30, 1765, the resolutions, somewhat amended, passed the House. Jefferson, loitering in the lobby watching the scene instead of attending his classes at William and Mary, describes the fat and excited Peyton Randolph as rushing past him swearing that he would have given five hundred guineas for a single vote to help defeat Henry. Yet this man, who so passionately resented the orator's bold stand on the Stamp Act, afterwards became the speaker of the Revolutionary House of Burgesses and of conventions, and the first president of the Continental Congress. Robert Carter Nicholas, who a year later succeeded Robinson as treasurer, was an important Revolutionary leader, as was Edmund Pendleton, chairman of the Committee of Safety and president of the constitu-

tion-making convention of 1776. George Wythe, another of Randolph's associates, played a prominent part in the creation of the State government and is credited by Jefferson as being the only man in Virginia sharing his own extreme views of the colonial constitution. Richard Bland had been the most effective literary representative of colonial rights.

Jefferson admits that there was no difference in principle on the Stamp Act resolutions between the opposing parties in the House of Burgesses, but merely a difference on the question of their expediency. "They were opposed," he says, "by Randolph, Pendleton, Nicholas, Wythe, and all the old members whose influence in the House had till then been unbroken."¹ The resistance of the tidewater planters was due to two things — to the leadership of a member outside of the old circle and, in greater part, to Henry's irreverent allusions to the king. The Virginian of that day, however much he might object to the policy of the British ministry, entertained a profound respect for the person of the sovereign; and the sentence which is almost all of the great speech that has come down to us — "Cæsar had his Brutus, Charles the First his Cromwell, and George the Third" — was drowned in the cries of "Treason" rising from a deeply shocked assembly. That rebellious speech startled a wider audience than the chamber which heard it; it ran through the colonies and gave rise to the agitation ending in Parliament's repeal of the offending statute.

The Virginia leaders had intended a constitutional protest

¹ Wirt's *Life of Patrick Henry*, 60. Jefferson's *Works* (Memorial edition), xv, 168.

against the Stamp Act; they did not wish to commit the colony to a resistance that the British government might construe as treason. The event showed that the orator was right, not they, and that a bold face intimidated the ministry where mildness and the spirit of conciliation would only have confirmed it in its course. So perhaps it is not to be wondered at that writers of succeeding generations, imbued with the prevailing democratic ideas and viewing the events of 1765 retrospectively, should have translated the conservative ring of planters and lawyers, which was thoroughly patriotic in temper if cautious in action, into a party advocating submission to England, and Henry, the agitator and incendiary, into an innovator forcing a declaration of colonial rights through a hostile House. We are further informed that the public so fully indorsed Henry and condemned his opponents that at the ensuing election for the assembly of 1766 many delegates who voted against the resolutions failed of reelection.¹ A number of changes did take place in the personnel of the succeeding House of Burgesses, but the rejected conservatives must have been very minor victims, since in no case was a conservative leader defeated. More than this, Peyton Randolph, the leading conservative, was elected speaker in place of John Robinson — a strange victory indeed for the patriots to have won over the “court” party. An explanation of Virginia politics in the decade preceding the Revolution on the theory of a “court” or British party leads to a dilemma. We are led to conclude that Patrick Henry, by the sheer force of genius, prevailed on the planters to stand

¹ W. W. Henry's *Patrick Henry*, I, 110. *Journals, House of Burgesses* (Virginia State Library), 1766-69, ix.

up for rights to which they had been indifferent before, or that he forced them because of his popularity to advocate principles they did not believe in. They were enlightened by the rather unlearned Henry on the subject of constitutional law, or were driven by fear of the populace into that basest of opportunism, insincere revolution. The whole history of the House of Burgesses — proud, independent, and tenacious of its privileges — speaks against such a theory.

In fact, it was not Henry who influenced the conservative leaders so much as it was the conservative leaders who furnished him with thunder. The orator began his career by putting into practice in his Hanover speech the arguments Richard Bland had introduced to the small reading public in the pamphlet of 1760. Henry's eloquence metamorphosed the reasoning of the constitutional lawyer into clear common speech. Again, in 1765, he endued with all the fire of his passion the protests which the House of Burgesses had made in 1764 in rather tame phraseology. In neither case was there a difference of principle; in both, all the difference in the world in power and effect.

The great crisis of 1765 did not, therefore, witness the beginning of the resistance to the British policy; that resistance had begun long before and was properly the result of the colony's rapid development into a strong and populous state. None the less, Henry's appearance on the stage was a momentous event in American history, for it marked the spread of the spirit of revolt from the assembly to the body of the people, and the rise of the Democratic Party. Henry was the inspirer and first leader of that party, which under Jefferson grew beyond the boundaries

of Virginia and finally triumphed in the nation at large. Before 1765 tendencies existed in Virginia, but no parties — hardly even factions. Legislative action lay in the hands of a group of large planters, and such opposition as existed did little more than express the discontent of westerners and the protests of dissenter preachers against the order of society. After 1765 there were two more or less clearly defined parties — the conservatives headed by the old leaders, and the democrats, or more properly, the progressives, led by Patrick Henry and Richard Henry Lee. Party names did not exist, but there was true party action, and the opponents, though agreeing mainly in their constitutional views, differed widely as to ways and means. Accordingly as one faction or the other predominated, the Revolution in Virginia went forward rapidly or moved cautiously and in the hope of reconciliation with England.

Patrick Henry, who overthrew the old order and brought in the new, is the most striking figure in Virginia history. In a measure he was aided by circumstances, but the chief factor in the *coup d'état* was his own overmastering personality. The hour and the man coincided. Henry controlled a majority in the House of Burgesses, where inarticulate opposition to the "ring" had been powerless, and he became a rallying figure for all the elements of dissent and revolution. The council, which recruited its membership from a circle of families in the Williamsburg neighborhood, had drawn away in recent years from the House of Burgesses and the planter class in general. The "conciliar" families more and more tended to form a separate circle elevated above the other planters. Their sympathies were English, and they would have become active

Tories if the great body of planters, who viewed them with jealousy and distrust, had not been in the saddle. As it was, they became lukewarm patriots and participated in the Revolution in order to save themselves.

We look back on this period with the knowledge of what happened. But the effect of Henry's stand against Parliament was not so striking as immediately to determine the public attitude on the issue. The courts practically negated the Stamp Act by making various excuses for doing business without stamps and threatened to shut up shop altogether. Northampton Court even went so far as to declare the Stamp Act unconstitutional, the first instance in American history of such a declaration. The fate of the act depended, however, not upon court decisions, but upon popular opinion, and in the interim between the adjournment of the assembly and the date set for the new law to go into effect — November 1, 1765 — quite a few Virginians applied for office under the tax commission in the impression that it would soon begin its work. No less a patriot than Richard Henry Lee had sought an appointment. This was an unfortunate step and one his friends were put to pains to explain, although Lee was really not so much to blame as might appear at first sight. The Burgesses had exhausted their resources of protest without impressing the British government, and the general belief in the summer of 1765 seems to have been that submission was inevitable. Benjamin Franklin thought so and made no effort to dissuade a kinsman who came to ask his advice about seeking a tax office. The crisis was indeed grave. If the colonists believed that acceptance of the Stamp Act was preferable to the risks of resistance, a

loyalist party would have arisen in Virginia, as well as in other colonies, having the same interests as the British government. Signs are not wanting that many men in Virginia were willing to ally themselves with the royal government and prosper in its shadow. While the House of Burgesses had resisted every effort of the governor to increase his authority and had even asserted itself against the royal prerogative, these contests were only skirmishes compared to a clash with Parliament over the fundamental right of taxation.

This fall of 1765, when the question of the Stamp Act was decided, was the critical moment in the American Revolution; all that followed was the direct result of the stand then taken. And it soon became clear that Patrick Henry had done a greater work than inspire a party in a legislative chamber; he had fired the people of all the colonies into passionate resistance to the British government. When the commissioner convoying the first consignment of stamps, a Virginian named Mercer, arrived in Williamsburg, the populace rose and demanded that he resign his office. This was on October 30, 1765, just before the Stamp Act became operative, and the scene was the most memorable the little Virginia capital had ever witnessed.¹ An excited crowd gathered before the coffee-house, which opened on the wide thoroughfare named, with such charming grandiloquence, "the Duke of Gloucester Street." The governor, accompanied by the speaker and other officials, went thither to greet the newly arrived stamp commissioner and found him on the point of being mobbed.

¹ *Journals, House of Burgesses* (Virginia State Library), 1761-65, LXIX.

A crowd composed of the best citizens of Williamsburg and planters of the neighborhood loudly threatened to "rush in," and the speaker interposed his ample person before the governor to ward off possible missiles from the representative of the majesty of England. Mercer was in actual danger for a time, but he promised to give a prompt answer to the demand for his resignation and Fauquier's coolness quieted the rioters, who finally allowed the stamp commissioner to go off under his guardianship. Next day the prudent Mercer resigned.

This outburst was no demonstration of the lower classes, but of the well-to-do and intelligent planters, who now definitely took sides against England. Owing to a similarity of feeling among the planters of eastern and southern Virginia, they acted unitedly, and because of their local power and influence they carried all classes with them into the Revolution. Henry had aroused the people generally; he had particularly stirred the younger and liberally inclined country gentlemen, and they were not afraid to use violence to gain their way.

The Williamsburg disturbance was followed by the organized and effective resistance of experienced politicians. Richard Henry Lee, who was astute enough to know that he had made a mistake almost as soon as he made it and quickly withdrew his application for a tax position, went to the extreme of opposition when he saw which way the wind blew. His excellent talents as a conspirator showed to advantage, when early in the next year, in February, 1766, he organized in his own county of Westmoreland the first "association,"¹ that form of boycott destined to

¹ *Virginia Historical Register*, II, 16.

give the British government endless trouble and to serve as the immediate forerunner of war in 1774. This "association" bound the subscribers to import no goods from England until the Stamp Act had been repealed, and while it did not immediately prove useful because hardly needed under the circumstances, it remained a valuable precedent for future service.

Repeal quickly followed from the emphatic protests of the colonies. The Stamp Act could not have been enforced without troops and the British ministry had no wish to resort to extremities. This show of weakness was fatal to the authority of the government. The colonies had learned that Parliament could be intimidated into giving way and never forgot the lesson: they went on to resist all further assertions of the English right of taxing the colonies, no matter on what ground. A now definitely developed patriot party in Virginia had learned, too, that uniform action might be secured by exerting pressure on the individual counties, and for this reason there never was a Tory party in Virginia. [The west was solidly patriotic because it was raw, democratic, and dissenter; the east was as solidly patriotic because the planter class, convinced that its welfare lay in opposition to England, overawed the considerable but widely scattered loyalist element, which was helpless in the face of a well-organized majority in every community.

The bonfires and bell-rings over the repeal of the Stamp Act might have been spared. The English administration, though it had abandoned the attempt to enforce a truly burdensome, income-producing tax, was not prepared to renounce the principle of taxation. It substituted

the Townshend Acts of 1767, which were based on the theory admitted by the colonists themselves of the Parliamentary right to regulate commerce; duties were laid on tea, glass, paper, and lead shipped into America. The struggle immediately recommenced, and the House of Burgesses, in April, 1768, adopted a complaint written by Richard Bland that the Townshend duties amounted to an exercise of "internal" control and so were unconstitutional, which was an extension of the doctrine of "internal" power to cover the whole field of taxation and a distinct advance over the former position of the provincials.) But the Americans of those days were too English to be much disturbed by inconsistencies; with marvelous facility they contrived to raise constitutional objections to every new assertion of authority on the part of the ministry. Indeed, the colonists were so thoroughly aroused by the real menace of the Stamp Act that they were determined to submit to no new taxes of any kind. It is not for us to blame them. Liberty cannot be made strictly dependent on a series of constitutional precedents; law seldom measures the real issues at stake in history. However defective the fathers may have been in logic, — and that they were sometimes defective we must admit, — nevertheless, they stood for the principle of self-government against the world-old system of arbitrary rule.

In the following year, in May, 1769, the House of Burgesses again protested against the British policy, with the result that Lord Botetourt, the governor, immediately dissolved it. The members nominally obeyed; in reality they merely adjourned to a private house, where they elected Speaker Randolph chairman and performed the first

act of real rebellion. Borrowing Richard Henry Lee's scheme of three years earlier, they adopted a non-importation agreement which specifically boycotted slaves, wines, and British manufactures. George Mason, who was not then a member of the assembly, drew this paper and George Washington presented it.¹ Peyton Randolph, who had led the fight against Patrick Henry over the Stamp Act resolutions, acted as ringleader in this conspiracy against the home government. It is true that the non-importation agreement adopted then did not have any marked immediate effect, but the boycott method of resistance was carried a point further in June, 1770, when an "association" was formed between the Burgesses and the leading merchants of Virginia. At this stage of the taxation controversy, the economic interests of the colony, commercial as well as agricultural, stood in united opposition to the British policy. This association bound subscribers not to import from Great Britain, after September 1, 1770, spirits, foodstuffs, certain manufactures, oils and paints, or to receive into keeping any of the prohibited imports after June 25, 1770. Goods imported in conformity with the association might be sold, but prices were not to be advanced because of restrictions laid on trade. In order to carry it into effect committees of five should be chosen in each county, with authority to publish the names of violators of the agreement and to examine the books of offending merchants. The first name signed to the association was that of Peyton Randolph; the next, that of Andrew Sprowle, of Norfolk, chairman of the trade and leading merchant of the colony. Then followed Robert

¹ W. W. Henry's *Patrick Henry*, I, 168.

Carter Nicholas, Richard Bland, Edmund Pendleton, Archibald Cary, Richard Henry Lee, Thomas Jefferson, George Washington, Benjamin Harrison, Thomas Nelson, Jr., and many others. At the same time the Virginia traders formed an organization at Williamsburg to further the association. A committee of 125 business men from all parts of the colony was appointed for the purpose of deliberating on the political situation.¹

While planters and traders thus joined hands in support of colonial liberties, one order of men remained somewhat in sympathy with the British government. The clergy had been disheartened by the Privy Council's abandonment of their cause in the Twopenny case. They had yielded to their fate without resignation, because they felt they were in the right, but their evident helplessness did not tend to encourage them to engage in other disputes with the assembly. Nevertheless, a few irreconcilable spirits, led by John Camm, president of William and Mary College, had the courage to defy public sentiment in another issue. Virginia was still mainly Anglican in religion, though dissent was rapidly growing at the expense of the establishment, but the Anglicans quite as much as dissenters opposed the foundation of a colonial episcopate, that scheme of the northern Anglican clergy. Opposition to an episcopate on the part of Virginia Episcopalians was political, of course, not ecclesiastical; they feared that an official like a bishop might lend a dangerous support to the ministerial plan to control the colonies. Under Camm's influence, James Horrocks, the commissary in Virginia, called a convention of ministers to debate the episcopate,

¹ *Virginia Historical Register*, III, 81.

but only a handful responded and their interest was obviously lukewarm. Camm's desire to strengthen the movement for a bishop therefore came to naught. He had, however, displayed his own Tory and High Church principles and his action subjected the Episcopal ministers in Virginia to the suspicions of a part of the populace, when, as a matter of fact, many of them were patriots and a few were Revolutionary leaders. This abortive attempt to draw the clergy into an ill-timed movement strikingly illustrated the unanimity of public opinion in the colony at that time; Anglicans joined hands with dissenters in opposing a political scheme masquerading under the name of religion.

CHAPTER II

THE RADICALS

THE colonies were now drawing together for a union in defense of their liberties; their action was no longer local, but taken with reference to the common interests. When a special court of inquiry was established in Rhode Island in 1773, with power to send accused persons out of the colony for trial, the progressives in the Virginia House of Burgesses resolved to take steps to bring about a general Continental understanding. For the past few years the conservative and progressive factions had almost lost identity in the oneness of opposition to England, but with the close approach of the Revolution their differences again appeared. In March, 1773, during the session of the assembly, Patrick Henry, Richard Henry Lee, and Thomas Lightfoot Lee, with Dabney Carr and Thomas Jefferson, two promising young men of the party, thinking that the conservative leaders were insufficiently zealous to be left the initiative, hit on the plan of forming intercolonial committees of correspondence.¹ The measure easily passed the House of Burgesses; the committee appointed consisted of Speaker Randolph, Nicholas, Bland, Pendleton, Benjamin Harrison, Dudley Digges, and Archibald Cary, conservatives, and Richard Henry Lee, Patrick Henry, Jefferson, and Carr, progressives. Thus while the radicals succeeded in inaugurating their policy, the older faction controlled the committee.

¹ Henry's *Patrick Henry*, I, 160.

This first intercolonial intelligence bureau, owing its inception to the fertile brain of Richard Henry Lee, did much to bring the scattered American communities into a harmonious policy. The colonies were kept well informed and gave Massachusetts prompt and effective support in her troubles. When the news of the Boston Port Bill reached Williamsburg in the midst of a session of the assembly, the progressive leaders, Henry, the Lees, and Jefferson, summoned a caucus of their followers and again took the bit in their teeth.¹ They fixed up a plan for a day of fasting on the date when the Port Bill became effective, and induced Robert Carter Nicholas to introduce the resolution, reasoning that his weight and position would carry it through. Fast days were not much in the Virginia fashion, and Henry and Jefferson in proposing to celebrate one showed that they were conscious imitators of the Long Parliamentarians. In the excitement of the hour elderly conservatives stood hand in hand with the younger progressives and passed the fast resolution without opposition.

Dunmore, the governor, dissolved the assembly on May 25, 1774, which was all that a shocked governor could do. The Burgesses, as before, gravely accepted dissolution in form and forthwith retired from the official state house to the Williamsburg tavern, where in that so-called Apollo room, dedicated to colonial mirth and revel, they put Peyton Randolph in the chair and adopted another boycott association, besides taking the fateful step of deciding to propose a general congress of the colonies. Philadelphia was suggested as the place and September 5, 1774,

¹ Jefferson's *Works* (Memorial edition), I, 19.

as the date. The meeting also issued a call for the election of delegates from the counties to a convention of the colony at Williamsburg on August 1, 1774.

In this unofficial meeting in the tavern, where sentiments might be expressed without fear of interruption, the differences between conservatives and progressives again came to the surface. The radicals, led by Henry, Mason, and Richard Henry Lee, with Nicholas temporarily aiding them, made the sweeping proposal of stopping payment of British debts, ceasing both importation and exportation and closing the courts, measures of open rebellion. The conservatives, led by Paul Carrington, supported by Carter Braxton, Thomas Nelson, Jr., and Peyton Randolph, advocated payment of debts and continuance of exporting.¹ As an association forbidding exporting as well as importing was adopted, victory lay with the progressives, though debt-collecting was not prohibited.

The colony responded to the association and the call for a meeting by electing delegates to the August Convention (who were for the most part members of the House of Burgesses) and appointing local committees to enforce the boycott. The first of these committees, so far as is known, were formed in the Virginia towns in May and June, 1774.² Dunmore (afterwards Shenandoah) County also elected a committee on June 16, 1774, and Fairfax on June 18, at a meeting over which George Washington presided. Other counties followed, but in many of them the meetings did not elect committees, but remained content with approving the non-intercourse association and selecting delegates to the convention.

¹ *Magazine of History* (1906), 3, 153.

² *American Archives*, 1, 417.

This August Convention, patriotically perspiring in the midsummer heat, adopted a more extreme association, which bound subscribers not to import British manufactures and products and slaves after November 1, 1774, and to cease exporting tobacco after August 10, 1775, if England did not meantime come to terms. Furthermore, merchants were required to sign the association on pain of boycott, and subscribers, violating the association and detected by county committees, were to be publicly branded as "inimical" to America. This sweeping embargo shows all the way through the hand of Richard Bland, who earlier in the summer, at the meeting in his own county of Prince George, had outlined a non-intercourse scheme in almost the words used by the August Convention.¹

The August meeting of 1774 marks the actual beginning of the Revolution in Virginia. The members of the House of Burgesses, under the moderatorship of Peyton Randolph, quietly ignored the governor and proceeded to put into effect as a popular convention what they would otherwise have done as a legal assembly. Acting as direct representatives of the people, the convention, besides framing the association, elected Randolph, Bland, Pendleton, and Benjamin Harrison, conservatives, and Washington, Henry, Jefferson, and Richard Henry Lee, progressives, as delegates to the Continental Congress.

At the assembling of the Congress in September, 1774, the strong Virginia delegation made a deep impression, and Peyton Randolph, that portly gentleman whose destiny it was to head so many bodies, legal and treasonable,

¹ *American Archives*, I, 490.

was elected president. The Virginia progressives led the Congress in proposing bold measures; indeed, Patrick Henry, in his fire-brand fashion, declared that government in America was dissolved, and that the colonies, being reduced to a state of nature, were (according to the doctrine of Rousseau) free to enter into a new system of political contract.¹ Richard Henry Lee, father of boycotts, advanced non-intercourse as the needed panacea to cure the inflamed British public mind, and Congress adopted a stringent Continental Association forbidding the importation of British goods and the exportation of American products to British territories after certain dates. County and town committees were to carry the association into effect and impose on offenders the penalty of being published in the newspapers as "enemies of America," the "undesirable citizens" of that place and period.

Congress, in passing such a resolution and the colonies in undertaking to enforce it, assumed a power to which they had no legal claim whatever. The Continental Congress, which represented the people of the colonies rather than governments, was a frankly revolutionary body, and the Association was economic war preceding bloodshed. The great boycott adopted by Congress was almost the same in detail as that drawn up by the August Convention in Virginia, and was shrewdly, one might almost say, cynically, calculated to intimidate the imperial government by striking at the Englishman's proverbially sensitive pocket nerve.

This lengthy and tedious document bound the colonies

¹ John Adams's *Life and Work*, II, 366.

to refrain from importing British goods after December 1, 1774, — unless Pharaoh had in the mean time relented, — and to cease exporting products after September 10, 1775. American manufactures were to be encouraged in every way known to an age before the birth of “infant industries” and paternal government. Goods brought in between December 1, 1774, and February 1, 1775, should be reshipped or delivered to local committees for disposal and invoices brought in after February 1, 1775, must be returned unopened. To enforce these laws, styled (with unconscious irony) “recommendations,” Congress directed the appointment of committees in each town and county with inquisitorial and punitive powers. The punishment prescribed — publication of offenders in the newspapers — was much more serious than it sounds, because in the excited condition of public opinion it meant nothing less than a mild form of outlawry.

The Revolution began with the enforcement of the Continental Association, which was, in reality, rebellion. At this time the people of the colonies were overwhelmingly in favor of resistance; the Tory element was small. It was only when the failure of the commercial war became apparent and real war began that a genuinely loyalist party arose in the colonies; then the importance of the issue, dwarfing in the eyes of the colonists many grievances, brought over to the British side the merchant class, which found itself in danger of being ruined by the war, and also in some colonies a part of the planter interest. In Virginia, almost alone among the colonies, the planter classes were so united in sentiment and so all-powerful politically and socially that a Tory party had no chance

of development, although there, as elsewhere, the rudiments of such a party existed, and might have grown under less adverse conditions.

The Continental Association was carried out in Virginia rigidly and with great effect owing to that strong local feeling which unified sentiment to a degree unknown to modern communities. Each Virginia county was a little world of its own, somewhat narrow and self-centered, but with a variety of social strata and at least a few individuals of education and public experience. A small group of prominent men, usually connected by family ties, organized the opinion of each community. It is true that democratic feeling was by no means absent, even in the oldest and most conservative counties, but leaders customarily obtained their position through wealth and social standing, although the numerous rivalries that existed made ability necessary as well. The representative from eastern Virginia in the Revolutionary period usually was a capable and patriotic man — no mere well-to-do landowner.

The greater activity of the enlightened classes in eastern Virginia was largely due to the fact that the Revolution in the South was not of economic origin. This statement may seem heretical in the eyes of modern history students, accustomed to find one explanation for every phenomenon of human nature: nevertheless, the evidence points irresistibly to such a conclusion. Only with difficulty and great straining can economic causes for the Revolution in Virginia be adduced, and when examined they do not appear convincing. The fact that the movement began in Virginia with the adoption of measures designed to put economic pressure on England might appear to give

weight to such a theory, but the truth is that these weapons were resorted to for purely political purposes and to obviate the necessity of armed conflict. The Revolution in New England was primarily economic and the lower classes led it: the revenue policy of the British government threatened local industries. But apart from the Stamp Act, which would have proved burdensome alike to all the colonies, the colonial policy of the ministry was not oppressive to Virginia. Nor did the Navigation Acts interfere greatly with the welfare of the colony, which found as good markets in England as there were elsewhere and which had grown greatly in the eighteenth century. And it is difficult to believe that the king's plan to form new colonies west of the Alleghanies forced the land-hungry Virginians, as has been asserted, to go into the Revolutionary movement: land in the wilderness at that time was too cheap to fight about. The real economist, seeking the most plausible motive, would pronounce the Revolution in Virginia another Catalinarian conspiracy to obtain relief for a debt-burdened community by declaring *tabula rasa*. The Virginia planters were indeed heavily in debt to English merchants, just as the Southern planters of 1860 were largely a debtor class — though this fact is not used to explain secession. Furthermore, Washington, Mason, and many other fervent patriots were not among the debtors, nor were the westerners who so ardently supported the revolt.

In truth, the Revolution in Virginia was almost entirely political in origin. It was the effort of a community singularly tenacious of its rights and jealous of the broadening shadow of the British Empire across the world to

secure certain positions for its own safety; it was the determination of a proud, easy-going, liberty-loving community, conscious of its importance in America and of its small importance in English eyes, to maintain its old independence and increase it. Chafing even during the French-and-Indian War at any exertion of royal authority, the Virginians were not prepared to admit the Parliamentary claims put forth in 1764. Patrick Henry had appealed to this colonial jealousy and sense of difference, this vague and subconscious feeling of nationalism, in 1765, and the feeling once aroused never died out. The people of Virginia believed that the home government had determined in the Stamp Act to bring them to "chains and slavery," and thought that acquiescence in any tax whatever would mean the concession of a principle which would end in colonial exploitation for the benefit of England. Accustomed to self-government and to a freedom we cannot understand to-day, the planters were prepared to take the risks of resistance rather than to submit to any curtailment of their rights or any check to their development. They began the war reluctantly and without thought of separation from England, but to secure their former freedom; separation was a measure reluctantly adopted only when it became apparent that it was inevitable. And indeed, in the closing weeks of 1774, when the Virginians began their active resistance, they had no great expectation of going to war at all. It should not be overlooked that the Continental Association, while an active war measure, was intended to secure a peaceful settlement of the difficulties between colonies and ministry. The Association was an attempt to bulldoze Britain into another such con-

cession as followed the Stamp Act agitation, the provincials judging that if they could make their displeasure expensive enough to British commercial interests they would gain their point. The plan succeeded so far that it brought the British traders to clamor for an understanding with the colonies, but it failed to affect the government, which this time stood firm. War ensued and was to some extent the result of a mutual miscalculation. The Association, intended really as a peace policy, was a conservative much more than a progressive scheme. Its leading advocate was not Henry or Jefferson, but Bland, whose outline Congress adopted. The bolder minds among the progressives seem to have understood that war was inevitable; and Patrick Henry was ready for it early in 1775, before the first shot had been fired at Lexington and while the conservatives were still sanguine of a peaceful settlement. But Henry was the most far-sighted man of his generation.

With prompt enthusiasm the conservatives proceeded to obey the recommendations of the Continental Association, forming committees through all eastern Virginia. Like the August Convention, the committees had no legal existence: nevertheless, the convention had wielded more than the powers of the House of Burgesses, because untrammelled by hostile governor and council, and the committees also exerted very great actual authority. The old constitution quietly expired in the least violent of revolutions. This lack of jar was due to the fact that the class in control of affairs wrought the change; no social upheaval attended the overthrow of British sovereignty. Members of the House of Burgesses simply became delegates to the Virginia Convention of 1774, which inaugu-

rated the Revolution; and in the same way, justices, vestrymen, and other prominent persons formed the new county committees. Thus the old government was eliminated from Virginia, while all the time the governor sat in his residence at Williamsburg, "the Palace," imagining that everything would come right again.

At first, indeed, the Revolutionary movement followed time-honored precedents. On court-days in November and December, 1774, the farmers of eastern Virginia met as usual and, crowded on the court-house green, heard the orators they had always listened to hold forth on the iniquities of the British ministry and the endangered liberties of America. As might have been expected, they ended by appointing these same leading citizens as local committeemen to secure the "observation of the Association." It was the local gentry, not demagogues, who fanned the flame of revolution in the tidewater. It was they, as we are told, who turned balls and parties into patriotic festivities, putting heads together over tables, after the immemorial custom of revolutionists, and drunkenly roaring out liberty songs.¹ A critical and unfriendly observer at a mass meeting to hang Lord North in effigy wrote that the great body of the crowd present remained looking quietly on at the scene, while a few cheering and swearing gentlemen supplied all the enthusiasm.² That violent leader, Archibald Cary, put up a large pole at Williamsburg decorated with a bag of feathers and bucket of tar as a little hint to any who might be found wanting in patriotism or discretion.³

¹ Fithian's *Journal*, 96.

² *American Archives*, I, 970.

³ *Magazine of History* (1906), 3, 156.

The leaders of the conservative party were conspicuous in the formation of county committees. Edmund Pendleton, the chief who afterwards succeeded Peyton Randolph, was elected chairman of the Caroline Committee on December 8, 1774; Paul Carrington, chairman of the Charlotte Committee; Archibald Cary, of the Chesterfield Committee; Robert Carter Nicholas, of the James City; Joseph Jones, of the King George; Peyton Randolph, of the Williamsburg Committee, on which Nicholas and George Wythe also served; Richard Bland, of the Prince George; Landon Carter, of the Richmond; Benjamin Harrison, of the Charles City.¹ The county committee system in the east was completely dominated by the old leaders, to whom is largely due its extraordinary efficiency as an instrument to secure uniformity of sentiment by means of encouragement on the one hand and repression on the other.

The first local committees, modeled on the colonial committees of correspondence, began to be formed in the summer of 1774 after the appointment of the Baltimore Committee of Correspondence. Alexandria, on May 28, 1774, elected a committee to correspond with the Maryland metropolis, and three days later, on May 31, Dumfries² also appointed a committee. Fredericksburg came next, on June 1, 1774.³ After the May meeting of the assembly, when an association was adopted, the local committees of correspondence enlarged their activities to include the enforcement of the boycott, thereby anticipating the committees formed in the fall at the instance

¹ *William and Mary Quarterly*, v, 101-06, and 245-55.

² *Calendar of Virginia State Papers*, viii, 51.

³ *Ibid.*, viii, 54.

of Congress. The Dumfries public meeting, on June 6, 1774, instructed its committee of correspondence to take up the new duties;¹ in other places where committees existed they probably assumed them as a matter of course. A meeting at Woodstock, in Dunmore County, on June 18, 1774, elected a committee both to correspond and to enforce the association,² and at some time in June a similar committee came into being in Norfolk. Fairfax, Stafford, and Frederick elected committees in July, and other bodies were doubtless formed in other places about this time.

At the end of 1774 the Continental Association impelled the formation of committees in the eastern counties generally. The central, southern, and western counties followed a little later, until by the middle of 1775 probably every one of the sixty counties had complied. A committee "for seeing the Association duly executed" existed in Westmoreland prior to November 8, 1774, for we find it sitting in a case on that date. After this, the next committee elected under Continental regulations, so far as we know, was that of Henrico, on November 17, 1774. Hampton and Elizabeth City followed on November 21; Warwick, on November 23; James City and Chesterfield, on November 25; Richmond County, on December 5. This last committee was the second appointed for the county. Then in rapid succession came Princess Anne, Essex, Caroline, Prince William, King and Queen, Northampton, Charles City, Orange, Accomac, King George, Isle of Wight, and Williamsburg, all appointed in December, 1774. Many other counties selected their bodies early in 1775.

¹ *American Archives*, I, 388.

² *Ibid.*, I, 417.

In the first months of activity the town and county committees worked as independent organizations, without reference to any central authority. They enforced the non-importation and exportation directions of the Association, mercilessly repressed anti-patriotic opinion, encouraged Revolutionary sentiment, and prepared the colony for armed resistance to England. A surprisingly small amount of mob violence accompanied the repressive measures. A crowd from Williamsburg, in May, 1774, boarded a ship containing tea, destroyed the prohibited freight, and attempted to burn the vessel but without success. In general, the local machines ran too smoothly to need violence. The courts had put up shutters and the usual county administration was completely suspended, but justices and other local officials, under the title of committeemen, continued to exercise their powers, greatly enlarged; they assumed an inquisitorial authority over the life of the community. As a loyalist sadly lamented: "Everything is managed by committee, setting and pricing goods, imprinting books, forcing some to sign scandalous concessions and by such bullying conduct they expect to bring Government to their own terms."¹

History was rapidly made in the spring of 1775. The House of Burgesses, acting again as a convention, without governor or council, met in March, 1775, in the village of Richmond, where it could deliberate with more freedom than in Williamsburg under the governor's shadow. The tension in Boston, almost at breaking-point, made the meeting of even more than ordinary importance, since, in view of the evident failure of the Continental Associa-

¹ *Magazine of History* (1906), 3, 157.

tion to coerce the British ministry, war had passed from the region of possibility to that of immediate probability.

The strong men of the colony mustered in force. They were flushed with excitement and conscious of great impending events, and they broke out into a violent party disagreement as to the course to pursue. The conservatives, despite the fruitlessness of their commercial policy, still hoped for an understanding with England; the progressives were prepared for immediate war and revolution.

The struggle in the convention was precipitated over a pacificatory declaration "that it is the most ardent wish of this colony (and they are persuaded of the whole continent of North America) to see a speedy return of those halcyon days, when we lived a free and happy people."¹ Immediately after the adoption of this useless, if pious, prayer, Patrick Henry rose to move that the colony be at once put in a state of defense. This bold challenge was accepted by the conservative leaders, Bland, Pendleton, Nicholas, Benjamin Harrison, and Willis Riddick, who feared lest the sympathy of the Whig Party in England and Parliament, upon which the conservatives now hung their hopes, might be alienated by the threat of force. They still dreamed that the manufacturing interests of England would succeed in moving the government and averting war, much as the Confederates fondled the delusion that the stoppage of the cotton supply would force Europe to intervene in the war between North and South. Furthermore, they pointed out that the colony was in no condition to go to war with the first military and naval power in the world. Henry answered them in the most

¹ William Wirt's *Life of Patrick Henry*, 116.

famous of his speeches. Scouting the idea of a peaceful accommodation, the great agitator pleaded for military preparation and ended his appeal with that world-thrilling sentence: "Give me liberty or give me death."¹ It was a speech that stirred the patriot party in all the colonies, and, naturally, excited the disgust of Tories, who wrote home that the orator had denounced "the king as a tyrant, a fool and puppet and Englishmen and Scots as a set of wretches sunk in luxury who were unable to look the brave Americans in the face."²

Henry's arming resolutions, which were supported by Washington, Jefferson, and Richard Henry Lee, and aided by all his own matchless eloquence, barely passed the convention by a vote of 65 to 60,³ showing the strength of the conservative opposition. The committee appointed to prepare a plan of defense was, however, predominantly progressive. Patrick Henry, Richard Henry Lee, George Washington, Andrew Lewis, William Christian, Thomas Jefferson, and Isaac Zane were of this faction, while the conservatives were represented by Robert Carter Nicholas, Harrison, Pendleton, and Riddick.⁴ The personnel of the committee, largely agitators and western fighting men, appeared to guarantee vigorous military action, but party strife prevented it.⁵ It seems apparent that the raising of a military force was only the first part of Henry's plan, which, we are informed, intended nothing less than complete revolution and the assumption of government by

¹ William Wirt's *Life of Patrick Henry*, 120-23.

² *Magazine of History* (1906), 3, 158.

³ *Ibid.*, 3, 158; not exactly reported.

⁴ Wirt's *Life of Patrick Henry*, 124.

⁵ *Magazine of History* (1906), 3, 155.

the convention, including the appointment of magistrates under new commissions and the levying of taxes. His bold and direct mind saw little wisdom in the efforts of conservatives to maintain a show of respect for the royal representative at Williamsburg while preparing at Richmond for open rebellion. But the conservatives, in their loyalty to the constitution and their shrinking from war with England, preferred to be inconsistent rather than revolutionary: although they sat in a convention without legal authority, considering war measures against England, they were nevertheless ready to come together again at the governor's call as the legitimate assembly of the colony. Henry sought to rend asunder this benighted constitutionalism, which had no meaning now, and gain the advantages that come from taking a firm initiative, but the conservatives, who clung instinctively to the connection with the crown, succeeded in putting off the catastrophe a little longer. Nicholas, Harrison, Bland, and Riddick worked together strenuously to this end.

As a result of the united and determined conservative opposition,¹ the March Convention bore little fruit and the Revolution did not formally begin in Virginia before the battle of Lexington, as would have been the case if Patrick Henry had had his way. The history of the Revolution in Virginia throughout 1775 is a repetition of the clash in the March Convention, the conservatives time and again postponing decisive action in their efforts to prevent war and secure a peaceful settlement according to their ideas of the colonial constitution. This anomalous condition of a country in actual but unrecognized rebellion con-

¹ *Magazine of History* (1906), 3, 158.

tinued until late in the summer. The courts were closed, militia companies drilled at every court-house, and the county committees busied themselves in hunting out and suppressing British sentiment wherever it appeared: Dunmore, however, remained undisturbed in his "Palace" at Williamsburg. Seldom has history presented a more illogical picture.

Yet, in spite of the conservative fear and distrust of Henry's radicalism, the two wings of the patriot party worked together in some respects. The progressive wing, led by Henry, Jefferson, Mason, and the Lees, made concessions to the older, English-loving faction, which genuinely dreaded revolution though hostile to the British policy. The conservatives, in turn, coöperated with the radicals in necessary undertakings, such as the crushing of the individual Tories scattered through the colony. These, if left to themselves, might have combined to form a party: obedience to the Continental Association was demanded and dissent was repressed effectively. The chief concession made by the progressives to the conservatives was non-interference with Dunmore, whom the older men continued to regard as the legitimate head of the state. Undisturbed as he was, the one policy left Dunmore was masterly inactivity: he had no military force at his disposal and such authority as he still possessed was by grace alone.

Dunmore, however, mistaking the forbearance of the Virginians for timidity, determined to overawe them by a sudden and audacious stroke. On the night of April 20, 1775, a squad of marines from the king's ship *Magdalen*, lying in the James River near by, carried a quantity of powder from the colony powder-house in Williamsburg on

board the ship. The next morning, when the townsfolk learned that their magazine had been rifled, they appeared in the streets in arms, only to quiet down finally under the representation of the town officials that the powder would be restored. The council respectfully requested the governor to return the colony's property and were met with the transparent excuse that it had been removed for fear of a slave rising and would be sent back when needed. Peyton Randolph and Robert Carter Nicholas played a great part in making this evasion palatable to the Williamsburgers, who, respecters of persons and dignitaries as they were, could become riotous on occasions. A wild rumor sent them to arms a second time a day or two later, but their excitement at last subsided and the incident seemed closed.

The inland people were not so easily calmed as the tractable population of the capital. The news of the powder seizure spread through the colony and created great excitement. Some hundreds of volunteers from northern and western Virginia met at Fredericksburg, ready to descend on Dunmore, while at other muster-places the militia gathered in considerable numbers.¹ But Peyton Randolph, working to quiet the agitation, wrote around in the name of the town corporation that the governor had pledged himself to return the powder and advised strongly against violence. The musters, therefore, melted quickly away and left the victory seemingly with Dunmore. His lordship, nevertheless, had been sufficiently alarmed by the stir to issue, on May 3, 1775, a proclamation repeating the slave-insurrection bugaboo. As might have been ex-

¹ C. R. Lingley's *Transition in Virginia from Colony to Commonwealth*, 67. An excellent study of this period.

pected, the county committees which then ruled Virginia received with contempt this bungling essay in fiction; still, they were for the most part conservative enough in temper to accept the explanations of the patriot leaders at Williamsburg as satisfactory.

At this juncture, however, the agitator who appeared at every crisis, who had stirred the colony in the "Parsons' Cause" in 1763 and again in the Stamp Act debate in 1765, seized the Heaven-born opportunity for vigorous action. Rousing the Hanover Committee by his fiery words, Patrick Henry marched on Williamsburg at the head of the county volunteer company. The act was less rash than it seemed: not only could Henry count on a large and devoted following throughout Virginia, but the movement was so well timed that it completely unnerved Dunmore, who had no troops behind him. When the orator, with the ever-growing mob of armed men that hastened to him from all sides, drew near Williamsburg, the governor sent him a message apparently offering payment for the powder. In any event, Henry received from a royal officer a sum of money for the powder and thereupon turned his men homeward. He professed satisfaction with the result, but, in reality, he had been checkmated in the greatest effort of his career. There can be little doubt that he marched on Williamsburg prepared to take advantage of Dunmore's folly by seizing the government and inaugurating the Revolution without further delay; but the conservative leaders in Williamsburg, who strove almost frantically to stave off the crisis,¹ brought such strong pressure to bear on him that he abandoned his plan in the interests of

¹ *Magazine of History* (1906), 3, 159.

harmony. The governor continued to hold his place after the gunpowder incident solely because of the rather ill-judged procrastination of the conservatives and their excessive tenderness for constituted authority.

Dunmore now gave another and supreme illustration of his weak and unstable character, which oscillated between timidity and temerity according as pressure was applied or withdrawn. England has been fortunate for the most part in her choice of official representatives in her colonies and vassal nations; they have usually been men of ability, and occasionally of insight and feeling. (Was there ever an administrator who surpassed Raffles of Java?) But the British government had not acted with its accustomed discrimination in selecting the Scots Earl of Dunmore as governor of Virginia at a critical time like 1771. He succeeded two able and popular men, Fauquier and Botetourt, who had done everything possible to reconcile colony with mother country. Dunmore, also, in his rather flaunting way, had courted popularity with some degree of success, although his plan to prevent revolutionary activity by proroguing the assembly, whenever the House of Burgesses became seditious, had wearied the Virginians without interfering with their programme.

The governor was mad enough, as soon as Henry's back was turned and his force dispersed, to issue a proclamation branding him an outlaw and warning the people against aiding and abetting him. As Henry was the idol of the hour — the leader of the colony as no other Virginian had ever been — and as Dunmore had no military force whatever, such a fiery pronunciamiento, coming on the heels of an abject backdown, was worse than foolish.

Whatever his reason, Henry calmly ignored the proclamation, which would have served him as an excellent pretext for attacking Dunmore in earnest. Consideration for the conservatives probably kept him from acting, but he may have decided that it was higher wisdom to allow the inevitable to occur without his personal interference.

Owing to this reluctance of the conservatives to precipitate action, their hopeless crying of peace when there was no peace, the curious situation in Virginia continued for a month longer. Dunmore even called a meeting of the assembly for June 1, 1775, to secure the reopening of the courts and consideration of Lord North's compromise proposals. It is likely that he at last realized that his policy of embarrassing the colony by refusing to convene the legislature had merely resulted in his own practical elimination from affairs. The Revolutionary movement, far from halting in the vacation of the assembly, had in fact progressed faster, because unhampered. The Burgesses were too experienced a breed of politicians to be checkmated by so obvious a ruse as prorogation. Dunmore was finally able to perceive this.

The Virginians of that day were either Englishmen and lacking in a sense of humor, or they had become Americans and had acquired it in a high degree. For, with war in full blast in the North and the colony in arms, the Revolutionary Convention of March, 1775, including Henry, actually met at the governor's order on June 1, 1775, as the House of Burgesses. The House as the constitutional lower body of the assembly gravely considered the acts it had performed in its other rôle of rebellious

convention and duly pronounced them good.¹ It did not, however, gratify the governor by reopening the courts. The schedule of fees to be charged in judicial proceedings had to be regularly reenacted; and in the absence of such authority no fees could be charged or business transacted² — an ingenious constitutional device to secure the subserviency of the courts to the House of Burgesses. The Burgesses rejected North's conciliatory offer to accept the assurances of the colonies that they would contribute to the defense of the British Empire; the Revolution had gone too far to be stopped by anything short of a complete renunciation of the right of taxation by Parliament. Even the conservatives, anxious as they were to preserve peace, demanded this much.

Feeling against Dunmore rose to such a height in the House of Burgesses that, according to report, Richard Bland, the erstwhile conservative, actually suggested hanging him and was warmly supported in this extraordinary proposal.³ What was more alarming than these outbursts, a force of riflemen, known as "shirtmen" from their long hunting-frocks, so different from the conventional European garb of the tidewater, had reached Williamsburg from the piedmont counties, and Dunmore fled with his family on board the *Fowey* at Yorktown. Still attempting to play the governor from his floating headquarters, he sent demands to the assembly from time to time. On June 21, 1775, the disgruntled Burgesses, who were almost morbidly anxious to preserve constitutional forms without regard to circumstances, forwarded to the governor a

¹ Lingley's *Transition in Virginia from Colony to Commonwealth*, 71.

² *Ibid.*, 70.

³ *Magazine of History* (1906), 3, 160.

last protest against his absenteeism and concluded their work without him,¹ adjourning to meet again on October 21, 1775. The constitutional figment was now worn threadbare; since the acts passed by the assembly were not legal without Dunmore's approval, it was evident that Virginia, in spite of her conservatism, had come to the point of undisguised revolution. The colonial assembly never met again. On October 21, and at two subsequent dates, there came together a handful of Burgesses, too few to make a quorum.² The House of Burgesses, in its rôle of convention, assumed both the executive and legislative functions.

Yet so strong was the force of legal practice and constitutional principles in Virginia, so deep-rooted the attachment of the older conservatives to England, that one more effort was made to legalize the proceedings of the convention. As late as January, 1776, when Dunmore was a defeated fugitive and the Committee of Safety ruled in his stead, the governor wrote Richard Corbin, president of the council, — himself somewhat of a Tory, — expressing a wish to act as mediator between the colony and England.³ Corbin sent this letter to the Committee of Safety, which declined to consider Dunmore's offer, but referred it to the next meeting of the House of Burgesses. Corbin then went to Williamsburg in February, 1776, to consult the Committee of Safety, and, with its consent, visited Dunmore on board his ship for the purpose of inducing him to commission the president of the convention as acting governor for the adjourned meeting of the assembly. Dunmore refused to grant the commission, thus frustrating

¹ Lingley's *Transition, etc.*, 74.

² *Ibid.*, 75.

³ *Virginia Gazette* (Alexander Purdie), March 1, 1776.

the last effort of the conservative leaders to continue the government under the colonial constitution.

The convention that met on July 17, 1775, disregarded the fugitive governor, now become an active enemy, and at once proceeded to put the colony on a war-footing. It directed the enlistment of two regiments of troops and attempted to provide an efficient militia system. Furthermore, it filled an imperative need by creating a revolutionary executive, that junta known as the Committee of Safety.

In the absence of several of the most noted leaders, sent as delegates to Congress, Peyton Randolph, Harrison, Henry, Jefferson, Wythe, and Richard Henry Lee, the highest vote for committeeman was given Edmund Pendleton, who thereby became chairman. He, with Richard Bland, who declined to go to Congress, Paul Carrington, Dudley Digges, Carter Braxton, John Page, and John Tabb, conservatives, and George Mason, Thomas Ludwell Lee, William Cabell, and James Mercer, progressives, composed the Committee of Safety. The election was a conservative triumph, owing partly to the absence of Richard Henry Lee and Jefferson, both of whom were in Philadelphia, and, even more, to the loss of Patrick Henry, who aspired to military glory as colonel of one of the Virginia regiments. Since Mason, the one strong progressive member of the committee, was absent from most of its meetings, direction of affairs fell into the hands of the conservatives under the leadership of Edmund Pendleton, the chairman. This transfer of power from progressives to conservatives, with some of the aspects of a *coup d'état*, led to the postponement of hostilities with

Dunmore for some months. Indeed, the year might have expired peacefully but for the headiness of the ex-governor, who left the Committee no choice but war. With the progressive leaders out of the way, at the election of the Committee of Safety the conservative faction succeeded in getting the executive power in its own hands and so deferred the final step in the breach with England; they doubtless hoped for some eleventh-hour victory of peace to satisfy colonial demands and yet leave the British Empire intact. The conservatives never realized, as Henry and Jefferson did, that such a dream was the one impossible thing.

CHAPTER III

THE STRUGGLE FOR NORFOLK

THE only phase of the Revolutionary War in Virginia in which the few open loyalists played any active part was in the struggle around Norfolk in the closing weeks of 1775. That any residents of the colony dared side with England was solely on account of Dunmore's presence at Norfolk with a small fleet of men-of-war and a handful of British regulars. His active supporters in the colony were confined to the mercantile class, shippers and their clerks and dependents — the same class that supported British authority in all the colonies because it saw that war with England meant commercial ruin. Fortunately for the patriots Norfolk was a small town of about six thousand inhabitants and the local trading interest of inconsiderable numbers; otherwise, Virginia would have had to contend with a center of disaffection like Philadelphia, a seaport which must inevitably have fallen into British hands on account of its accessibility to sea-power and inaccessibility to the rest of the colony.

The royal governor, after abandoning his "Palace" at Williamsburg, in June, 1775, made his way to Norfolk, where he remained rather inactive for several months for lack of troops to help him to reestablish himself. The Revolutionary government, under the direction of the conservative Committee of Safety, had no wish to disturb him as long as he kept reasonably quiet. Military policy dictated that Dunmore should be attacked without delay,

for he had no land force of any sort until the latter part of July. The progressive element would have liked well enough to begin hostilities, but it seems probable that the conservatives still hoped that England would concede the colonial demands and end the dispute. In this hope they were making their last stand for peace.

Dunmore's headquarters were at Gosport, a village on the Elizabeth River above Norfolk, destined in later days to be the site of the United States navy yard from which the Merrimac ventured forth on her famous career. At first the governor had at hand only the sailors and marines of the frigates Mercury and Mars,¹ but he was afterwards reinforced by sixty men of the Fourteenth Regiment of the line, and eventually by a hundred more of the same regiment. This was a force too small to be of importance in itself, but valuable as a nucleus for building up some sort of military organization. Owing to the reluctance of the Virginia Revolutionary government to take the initiative, he was allowed time to gather a small and motley company of recruits, mostly Scotch clerks and runaway negroes. With these he soon succeeded in making himself a good deal of a nuisance.

The county committees along the Chesapeake are said to have begun the war by their rigid enforcement of the Continental Association, but the actual beginning of hostilities resulted from British activities in August, 1775. In that month Captain Squier, of the sloop-of-war Otter, cruised in the Chesapeake and its tributaries, plundering plantations and carrying off provisions and slaves. He conducted this annoying warfare in ship's

¹ *Magazine of History* (1906), 8, 160.

tenders and confined himself chiefly to raiding for provisions in the neighborhood of Norfolk; occasionally, however, a coasting schooner was seized and held as a prize.

The earliest show of violence occurred on September 2, 1775. On that date Squier, while apparently engaged in one of his chicken-stealing expeditions along the Bay, had his tender driven ashore near Hampton by a storm. The exasperated inhabitants took advantage of the opportunity to appropriate the guns and burn the tender, but without offering to injure or detain the crew. Squier made repeated demands for the return of the stores and finally went to Hampton with several tenders. He attempted a landing, but a brisk fire from one of the houses drove him off with a loss of two killed and two wounded.¹

This beginning of hostilities, together with Dunmore's threatening attitude, compelled the Revolutionary government to move against Norfolk. The Committee of Safety gradually gathered a considerable body of militia at Williamsburg, consisting in large part of riflemen, who were expert marksmen with considerable experience in bush fighting and by far the most efficient soldiers the colony possessed. These troops, when organized into two regiments, formed a fairly well-trained force.

During the summer a strange condition of affairs existed in Norfolk. The rigid enforcement of the non-exportation policy had ruined business and greatly lessened the early enthusiasm for the colonial cause displayed by the merchants of that place. Besides, the presence of Dunmore, even though he took no active measures against the patriots, made necessary a policy of loyalism or neutrality

¹ *Virginia Magazine of History and Biography*, xiv, 133.

on the part of those who remained at home. Dunmore, in one way and another, during his stay at Norfolk managed to gain a considerable number of adherents in that region and to cause the revolutionists no little uneasiness.

But his resources were too small to be of much use in a serious conflict with the provincial forces. He had about three hundred British regulars, some sailors, a handful of Scotch merchants and clerks gathered from Norfolk and Portsmouth, and about two hundred slaves, ignorant for the most part of the use of arms. However much hope Dunmore's natural optimism may have aroused in him, the Norfolk loyalists did not delude themselves as to the seriousness of their position. They heard with growing dismay the reports from Williamsburg, whither the up-country riflemen were flocking in numbers, and wrote pessimistic letters home to Scotland.

In this preliminary period before the beginning of undisguised war, Norfolk was reduced almost to a condition of blockade by the county committees along the Chesapeake. Communication between that town and Hampton and Williamsburg was cut and no person might travel in and out of Norfolk without a pass. Suspicious characters were not allowed to come within thirty miles of the place; newspapers were held back from it; and ships coming from that direction could not go up the rivers. A small trade of some sort continued, but many of the Norfolk people, alarmed by the situation and by the reported threats of the colonial troops at Williamsburg, moved into the country with their families and effects.¹

¹ Andrew Sprowle's letter in *Miscellaneous Papers of the Committee of Safety and the Convention of 1775*. Virginia State Library.

For some months Dunmore made no attempt to take possession of Norfolk, but contented himself with remaining on his ships in the harbor and assuming a rather over-awing attitude. Naturally there was some irritation. In spite of the town's small size it boasted a mob, which, unlike the merchants, was more or less patriotic in feeling. A loyalist named John Schau, who had made himself obnoxious, was roughly mishandled — apparently affording the only instance in Virginia of violence offered to Tories during the early part of the Revolution. Even this outrage was probably due to the presence of the British, who frequently visited Norfolk from their ships and inclined to carry things with a high hand. Early in August a few soldiers took possession of a store in Gosport belonging to Andrew Sprowle, the leading merchant in the colony. Sprowle, by quietly submitting to this quartering on his property or by a generally lukewarm and loyalist attitude, awakened the suspicions of the Norfolk borough committee, and he was summoned to appear before it and give an explanation of the use of his house by the British. Instead of obeying, Sprowle replied that the soldiers had insisted on escorting him to the committee meeting in order to protect him from Schau's fate, but added that he refused the escort for fear of provoking a disturbance. As an alternative he suggested that the committee visit him under a pledge of safe conduct on board of one of the warships or at his house in Gosport. The committee must have believed that he had been coerced, for, in its reply of August 21, 1775, it approved of his behavior and thanked him for the information given. "In the mean time," it wrote, "they see the fatal necessity of your sub-

mitting to this Arbitrary & Unprecedented Act of Tyranny — a cruel situation indeed when every petty Officer in His Majesty's service assumes the Authority of an Absolute Monarch, and the private property of a peaceable Citizen is seized upon as Lawful prey.”¹

Sprowle's case is a sad example of what usually happens to prominent citizens caught between the upper and lower millstones of civil conflict. He had no real partisanship, merely desiring to live in peace; but it was not possible in Norfolk for a man of his position to occupy a neutral attitude during the latter months of 1775. Sprowle could not bring himself to abandon his property and seek safety in the interior like the majority of Norfolk people of patriot sympathies. He stuck by his goods and paid for it; for Dunmore later came ashore and quartered his retinue on him, and, when the approach of the Virginia troops forced an evacuation, ended by carrying the merchant with his family aboard the British fleet. There he was treated with inhumanity, till, worn out by his misfortunes and sufferings, he died on ship some months later. By a former marriage Sprowle's wife had a son, John Hunter, who had accepted a commission in the British army and was then a prisoner in American hands. On the pretense of letting her see her son, but really to get rid of her, the governor allowed the widow to visit Norfolk. The Committee of Safety, considering her a dangerous person, ordered her back to Dunmore, and he in turn refused to receive her. The poor shuttlecock at length escaped from an impossible situation by sailing for England.²

¹ *Miscellaneous Papers of the Committee of Safety and the Convention of 1775.*

² Legislative Petitions. Norfolk (B4228). Virginia State Library.

Dunmore ventured on his first act of aggression in Norfolk in the latter part of September, 1775. One morning a boatload of grenadiers and marines landed there, surprised a printing establishment which had been issuing revolutionary pamphlets and manifestoes, and carried off both press and printers. A crowd of several hundred people watched the proceedings without daring to interfere. The militia, when called out, failed to respond in any numbers, and the British went back to their ship full of contempt for provincial valor.¹ The Williamsburg government is said to have blamed the Norfolk people for making no fight,² but with the frigates lying in the harbor ready to open fire, the local soldiery could have done nothing.

Nevertheless, the affair gave Norfolk a black mark among the patriots. Loyalists complained in their letters that the provincials were breathing out threatenings against the town and predicted that it would be destroyed unless help came from England. In anticipation of this fate, a good part of the population moved into the interior or sailed for the British Isles. Anthony Warwick, a Tory, reported that a third of the people had gone away, carrying most of their property. Deep apprehension prevailed among those who remained.

After the attack on the printing-press, Dunmore went on to seize persons conspicuous for activity in the patriot behalf, among them John Goodrich, who had recently brought powder into the colony for the Committee of Safety. Goodrich, a man of rather low moral nature,

¹ *Miscellaneous Papers, 1775-1776* (Virginia State Library).

² *Virginia Magazine of History and Biography*, xiv, 134.

was so wrought upon by Dunmore's threats or promises that he changed sides — most disastrously for himself. The governor also began to put pressure on the people of the Norfolk neighborhood to declare for the royal cause, while in retaliation the county committees blockaded the town more and more rigorously. A Tory, writing on November 10, 1775, vividly describes the difficulties created by the committees: —

It is not now possible for any of our Countrymen to travel the Country without a pass from Committees or Commanding officers, which none of them can procure & indeed its difficult for even the Natives to get permission to come here; so that we receive no Intelligence of what is doing in the Country except by water & none but the Tenders belonging to the Men of War are allowed to come up to this place. . . . It is now certain that the provincials are on their march from Williamsburg for this place or Norfolk, it is uncertain which, tho it is generally believed they come with a professed Intention of destroying by fire both Towns . . . the whole Country are anxious to have these Towns destroyed as they think them places of refuge for those who are Inimical to what they call the Liberties of America; & true it is there are not so many Inhabitants now in both Towns but what are avowed Tories & have publicly declared themselves friends to Government & willing to take up arms in its defence. Petitions and addresses are daily presented to the Governor by the Inhabitants of Norfolk & the Country around it praying that they may be presented with arms to assist in the defence of themselves & of Government & some of them have taken those who are most troublesome in their neighborhood & brought them on Bd the Man of War where they are detained prisoners & will soon be sent to Boston for their tryal.¹

The royal governor, partly by flattering and raising the hopes of the loyally inclined and partly by hectoring the

¹ *Miscellaneous Papers, 1775-1776.*

neutral, collected a small levy of auxiliaries — possibly two hundred in all. In addition to these, several hundred runaway and kidnapped slaves were armed and uniformed; but time and officers were lacking to turn them into efficient troops, and we are told that the British regulars greatly disliked serving alongside them.¹ Dunmore offered commissions in the service with great liberality, but found few takers. Among the handful who accepted was Josiah Philips, afterwards noted as a loyalist outlaw operating in this district. The governor also directed town meetings to be held in Norfolk from time to time for the purpose of arousing enthusiasm for the British cause, at one of which he was formally invited to take possession of Norfolk. John Woodside, who seconded this motion in the meeting, thereby gained the reputation of being “inimical” and was afterwards refused recompense for his property destroyed at the burning of Norfolk: the other loyalists who suffered by it shared the same fate.²

While people of importance were lured by flatteries or coerced by threats into espousing the British side, the sailors and marines worked on the lower classes along the shores of the Bay, endeavoring to wean them from their lukewarm allegiance to the province, or at least to keep them indifferent. The Northampton Committee complained to Congress of this practice; they declared that the British tenders, plying along the Eastern Shore, assured the fishermen that nobody had to fear the British except the committeemen and leading patriots, and that the men who urged them to take up arms were their

¹ *Miscellaneous Papers, 1775-1776.*

² *Legislative Petitions. Norfolk (B4265).*

greatest enemies. These advances made some impression. While people of property were in the main well affected to the American cause, many feared to declare their sentiments openly until a force arrived to assist them:¹ in southeastern Virginia, the lower classes for the most part remained indifferent or hostile to the Revolution until the end of the war.

Hostilities may be said to have begun about the middle of November. If the initiative had devolved on the reluctant Committee of Safety, there is every reason to suppose that the year would have passed without fighting. Such a result would have been greatly to Dunmore's advantage; even though the provincial levies were preparing for conflict and so improving with time, his own force was as yet too small to engage in a real struggle: he had only one chance and that was that a breeze might blow through the Capes a few transports carrying a British regiment. Until this happened his cue was to lie low.

But Dunmore thought that boldness was his best policy. By this time he had succeeded in collecting a mixed and untrustworthy force of negroes, Scotch loyalists, and Norfolk and Princess Anne militiamen who had absolutely no stomach for fighting on either side. Trusting to this undisciplined band and his few regulars, the governor ventured to make open war and thus forced the Committee of Safety in self-defense to attack him. Unable to remain inactive any longer, the Williamsburg government put its troops into motion along the south side of James River in October, 1775. About the same time two militia colonels, Anthony Lawson and Joseph Hutchins, gathered

¹ *Virginia Magazine of History and Biography*, xiv, 253.

at Kempsville that part of the Princess Anne and Norfolk militia that remained true to the colonial cause. Kempsville, the county seat of Princess Anne, is a village on the headwaters of the East Branch of the Elizabeth River, a few miles southeast of Norfolk. Being at the intersection of several roads, it was a place of some strategic importance in a country where roads were few and swamps abounded. Dunmore, in turn, sallied forth from Norfolk on November 14, 1775, with about one hundred and fifty grenadiers and fifty or more loyalists and negroes, and marched to Great Bridge on the South Branch of the Elizabeth River, twelve miles due south of the town. He had been led to take this step by a report that a party of North Carolina militiamen had advanced thither for the purpose of supporting the Virginia troops,¹ and also possibly by a rumor of the coming of the dreaded "shirtmen."² But as neither Carolinians nor the detachment from Williamsburg had reached Great Bridge, Dunmore turned east along the edge of a large forest to Kempsville, where he had learned the local militia were gathered in some force. The colonial troops, about three hundred in all, had taken post in the woods along the highway, and were prepared for resistance. When the head of the marching column came in sight some distance down the road, the militiamen fired a volley, but without effect. The regulars, returning the fire, drove their opponents from cover into the river near by, with a loss of several killed, several drowned, and fifteen or twenty prisoners, including Lawson and Hutchins.³ The affair was an easy triumph of

¹ *Virginia Gazette*, January 20, 1776.

² *Virginia Magazine of History and Biography*, xiv, 387.

³ *Ibid.*, xiv, 256.

regulars over undrilled and half-hearted farmers and fishermen, but the participants on the British side made much of it as an omen of future success and a specimen of Virginia valor. The soldiers jocularly asserted that Hutchins had been captured because he was too drunk to run away with his followers.

The night following the skirmish the grenadiers and negroes broke into the houses in the hamlet and insulted the owners, apparently without restraint by Dunmore. A woman who had been frightened by an armed negro appealed to the governor for protection. "Why, madam," he nonchalantly replied, "this is a provoking piece of insolence, indeed, but there is no keeping these black rascals within bounds. It was but the other day that one of them undertook to personate Captain Squier, and actually extorted a sum of money from a lady in his name. But we must expect such things, whilst this horrid rebellion lasts." He then asked: "But, pray, madam, where is your husband all this time?" The woman replied that she did not know and, furthermore, could not tell when she would see him. "Well, madam, when you do," said Dunmore, "you must be sure and tell him, for me, that this is no time for a man like him to be out of the way. His Majesty wants his service, and I will give him any place he will name, if he will come in and join us. But join us he must."¹

The first successes in a war, trifling as they usually are, have an effect altogether disproportionate to their importance. Dunmore signalized his victory by erecting the king's banner at Kempsville next day — a performance recalling the planting of the standard by Charles I at

¹ *Lower Norfolk County Antiquary*, II, 135.

Nottingham. The immediate neighborhood and some of the poor Pungo fisher-folk who had run away the day before came in and took the oath of allegiance. The people of the county, aware of their helplessness or impressed by Dunmore's success, also took the oath in considerable numbers and wore on their breasts the British badge of red. The price of red cloth rose in the Norfolk stores, and the woman who had interviewed Dunmore at Kempsville was shocked to have her husband come home wearing the familiar scarlet. "Oh!" she said, "is it come to this? Believe me, I would rather have seen you dead than to have seen you with this red badge." "Pshaw!" he answered, "do you think it has changed my mind? Don't you see how Dunmore is carrying all before him, and, if I can save my property by this step, ought I not in common prudence to wear it, for your sake and the children?"¹

Menaces were mixed with flatteries to induce the backward to take the oath. Matthew Phripp, a prominent merchant, who was forced into subscribing, was roundly rated by Dunmore for not coming in before.² The potent conjurer was fear. The governor, indeed, succeeded so well in his coercive policy that on November 15, 1775, he took the step of declaring martial law, ordering all loyal men to repair to the standard under the penalty of being considered traitors and proclaiming freedom to the slaves and indented servants of rebels.

The brush at Kempsville, together with the proclamation of martial law, had the immediate effect of inducing a large proportion of the population of Norfolk and Princess

¹ *Lower Norfolk County Antiquary*, II, 136.

² *Miscellaneous Papers*, XIV, 256.

Anne to take the oath. Tories noted with exultation the sudden change of sentiment in the countryside. It was even asserted that the two counties had come in bodily except for a few formerly active patriots, to whom Dunmore, by way of making an example, refused to tender the oath.¹ Unquestionably the citizens of Norfolk went to great lengths to show their loyalty on Dunmore's return to town from Kempsville. An entertainment regaled the weary and triumphant party and the British standard was erected before the court-house, while the timid and time-serving strove with each other to reach the Bible and swear allegiance.² Andrew Sprowle, a conservative witness, stated that about five hundred men had taken the oath at Norfolk.³ Probably others came in later, for an optimistic Tory asserted that "Treason had not one Abettor in the extensive county of Princess Anne." Dunmore himself declared (with evident exaggeration) that three thousand people had sworn,⁴ and added that with a few more men he would march on Williamsburg.

With the exception of Isle of Wight, where Dunmore's adherents were crushed, serious signs of disaffection to the patriot cause began to appear in the whole lower country. Men in Norfolk and Princess Anne who had taken a prominent part as revolutionists were driven into hiding to escape the visitations of the British and negroes. The Isle of Wight patriots retaliated by tarring and feathering the conspicuous loyalists, which frightened others into taking refuge with Dunmore.⁵

¹ *Virginia Magazine of History and Biography*, xiv, 249.

² *Ibid.*, xiv, 256.

³ *Ibid.*, xiv, 387.

⁴ *Virginia Gazette*, January 24, 1776.

⁵ *Calendar of Virginia State Papers*, 3, 92.

The situation was undeniably one of danger for the colony. If at this time, as might well have chanced, a British regiment had arrived under the command of a competent officer, there is no telling the result. The willingness of so many under a little urging to take the oath of allegiance to the king is evidence that no great enthusiasm for the American cause animated the inhabitants along the lower Chesapeake. The coming of troops, entailing a prolonged and doubtful military struggle, might have changed indifference into royalist partisanship; and a Tory party would have arisen in Virginia as in other colonies. The energies of the Revolutionary government would have been largely expended on the internal contest at the very time when the resources of the colony were most needed to maintain the American arms in the North. From this situation Virginia and the Confederation were saved by the speedy collapse of Dunmore's defense — a collapse due largely to want of support from the home government, which forgot for some critical months that the governor of Virginia still existed and flew the British flag.

The fall of the royal governor was also owing in no small measure to himself. A weak and commonplace man put in a position of extreme difficulty, it is small wonder that he blundered in making those obviously opportunist moves which always seem wisdom to his kind. By proclaiming freedom to the slaves and indented servants of rebels, Dunmore probably hoped to embarrass the planters with a servile rising at the same time that he secured recruits for himself. He may also have imagined that many slave-owners would declare for him in order to preserve their blacks or prevent an insurrection. As a result of the

proclamation a few hundred runaway slaves joined him, and these he furnished with arms and attempted to drill into soldiers. Later on a few hundred more came to his support and, together with the slaves he kidnapped, sailed away in his ships. These negroes, some of them savages almost ignorant of English, were of little service. The great majority of slaves, fortunately for themselves, remained quietly at home attending to their work.

As the price of this paltry accession of force, Dunmore became detested throughout the colony. He completely demonstrated the fallacy of attempting to incite slave risings — a policy which the home government had looked to as a means of paralyzing the resistance of the South. Possibly some of the negroes were sufficiently intelligent to doubt the advantages of freedom gained by violence: at all events, hesitation was wisdom here, since the majority of blacks who joined Dunmore, after being used as drudges in his fleet, died of smallpox or were carried off and never heard of again. Runaway negroes who took arms under Dunmore were not put to death by the patriots when captured, as would have been the case if they had risen of their own accord. A few of them were sold in the West Indies; but the greater part were sent to penal servitude in the lead-mines in southwestern Virginia, where they served the American cause with considerable effectiveness.

The proclamation of freedom to slaves destroyed the last vestige of influence remaining to Dunmore. It did more: it made him the best-hated man in the colony and settled all the colonists' scruples about making war on him; it converted into active patriots the large class which, having something to lose, came to the conclusion that it

was better off under the Revolutionary régime than under the royal administration. In fact, Dunmore's policy, by displaying the representatives of Britain in the character of incendiaries and enemies to society, had the paradoxical effect of converting the Revolutionists into the champions of law and order. The Committee of Safety, which without legal title had ruled Virginia solely through moral authority, was recognized henceforth by almost the entire population as the *de jure* government of the colony.

Dunmore's performances at Norfolk at length forced the Committee of Safety to move against him. Edmund Pendleton, the chairman, was practically the directing head of this body and as such the most powerful man in Virginia during the latter part of 1775. Patrick Henry, in deserting the convention to become colonel of the First Virginia Regiment, and Jefferson and Lee, through their absence in Philadelphia, left the conservative party in power, with the result that the Revolution almost stood still in the fall of 1775. The Committee of Safety, indeed, actively supervised the work of the local committees in crushing disaffection, but, inconsistently enough, hesitated to attack Dunmore. His depredations, however, left it no recourse. On October 24, 1775,¹ the committee, after a lengthy discussion of the various hostile acts he had been guilty of, such as harboring fugitive slaves, seizing a slave woman and other private property, and arresting and carrying on board his ships several patriots, decided to send the Second Regiment of the line and the Culpeper battalion to the neighborhood of Norfolk as an

¹ *Miscellaneous Papers of the Committee of Safety and the Convention of 1775.*

observation force. Even then, apparently, the committee had no definite intention of precipitating a conflict if it could be avoided.

This decision to send the Second Regiment instead of the First was important, inasmuch as it meant the passing over in favor of a subordinate commander of Patrick Henry, colonel of the First Regiment and ranking officer of the Virginia forces. While it is likely that Pendleton and his associates in the Committee of Safety naturally preferred an actual soldier like William Woodford to a politician entirely without military experience, they were also influenced by other considerations. Pendleton, the leader and best representative of the conservative party, had been opposed to Henry on many occasions beginning with 1765, so that the head of one faction was acting as the superior and director of the head of the other. Under the circumstances it is not to be wondered at that the popular orator was denied the opportunity of cementing his greatness by winning a military reputation. Thus the conservatives gave him his final checkmate.

Woodford possessed some ability as a commander and won a victory over Dunmore that, by the fame and popularity it gave him, served to show what it would have meant to a striking personality like Patrick Henry. While Woodford was winning laurels, Henry ingloriously idled at Williamsburg with a command put to no more serious labor than guard-mounting. In his impatience the orator wondered whether it would ever be called on to do anything more as long as he remained its commander, for he realized that the conservatives feared his popularity.¹

¹ Henry's *Patrick Henry*, I, 333.

Indeed the committee was almost openly hostile. Although Henry was the superior officer, he ceased to receive reports from Woodford, who preferred to report directly to the committee. That body did not discourage his insubordination. The Virginia force was afterwards joined by a North Carolina contingent under Colonel Robert Howe and he assumed command of the joint army, thereby completely doing away with Henry's shadow of authority. The latter attempted to assert himself and failed. He then appealed to the Committee of Safety, which decided that Woodford ought to report to him, but receive orders either from itself or the convention.¹ In this way the democratic leader saw himself quietly negated in military affairs and relegated to garrison duty in a place where a battle was little likely to occur. Distrust of Henry's military ability was not confined to the Committee of Safety; Washington shared it and regretted his continuance in the service, and Congress passed him over to appoint Robert Howe and Andrew Lewis brigadier-generals. Hurt by this treatment, Henry resigned his commission and returned to civil life. It was a final choice, for he never went back to the army. By leaving it, he played a great part in the founding of the Commonwealth of Virginia, of which he became the first governor, and rendered important service to the American cause in an administrative capacity; but his chief work was done before the war began, and possibly he made a mistake in returning to politics. When the technical ignorance and general mediocrity of the American officers are recollected, there seems no reason why a man so audacious, determined, and master-

¹ Henry's *Patrick Henry*, 1, 343.

ful as Patrick Henry should not have made a successful brigade commander. Politics and war have much in common.

Woodford, the choice of the triumphant conservative faction, slowly made his way towards the recreant Norfolk. On November 25, 1775, he arrived with his body of riflemen at Suffolk, in Nansemond, at the same time that his advance, under Lieutenant-Colonel Scott, camped within seven miles of Great Bridge on the South Branch of the Elizabeth River. In this region a large part of the inhabitants had declared for the royal cause, and Scott arrested several Tories, among them one Jim Inness, who had made himself prominent in Dunmore's behalf. Eight suspected persons, several of them women, were arrested at Suffolk by local patriots and turned over to Woodford on his arrival. Scott reported that most of the British troops had withdrawn from Great Bridge, leaving the post garrisoned by negroes and Tories. He desired leave to cross the South Branch of the Elizabeth River below Great Bridge and take this force in reverse, but Woodford cautiously refused to run the risk unless his subordinate was certain of the information. Detained at Suffolk by the need of replenishing his arms, the Virginia commander sent forward two companies under Major Alexander Spotswood to reinforce Scott. Woodford, in his report to the Committee of Safety, repeated the account so often given of the general disaffection of the people of that section to the American cause, but added that he had heard they had begun to fall away from Dunmore since the coming of the colonial troops and that it was believed that few of them would fight.¹

¹ *Miscellaneous Papers, 1775-1776*. Woodford's letter of November 26, 1775. Woodford's letters are printed in the *Richmond College Historical Papers*, no. 1.

Undoubtedly Woodford carried out the wishes of his superiors in moving deliberately. He may also have had military reasons: he had been lately reinforced by the Nansemond militia and by a handful of gentlemen volunteers, and a body of North Carolina militia was *en route* to join him. Altogether this would give him a force sufficient for his purposes. The appearance of a respectable body of provincial troops in the Chesapeake region at this time was of great importance. Dunmore's continued success, even in trifles, would in all probability have inaugurated a bitter civil war in the tier of southeastern counties, with a disastrous effect on the whole colony, but Woodford's arrival obviated this situation. He directed Scott to offer protection to all who would come in, including those who had taken Dunmore's oath, and to pledge himself to seize no private property except arms and ammunition. With the colonial troops at hand and Dunmore in a bellicose humor, a collision was evidently approaching. In view of the greatly superior strength of the provincials, it was rather expected that Dunmore would relinquish Norfolk without a fight, and it is possible that he would have done so but for the skirmish at Kempsville. That petty triumph seems to have deluded the governor into the belief that he might be able to make a successful defense. Accordingly, he garrisoned a block-house at Great Bridge, which commanded the approach to Norfolk from the south, and threw up earthworks for a space of a half or three quarters of a mile immediately behind the town. These works were mere shallow entrenchments, washed down by each rain; and the difficulty of holding them with a few hundred men, mostly raw recruits, was apparent

even to the untrained military perceptions of the Norfolk Tories, who gloomily anticipated the approach of the backwoods marksmen. But Dunmore, assuming his best air of confidence, prepared for battle.

In deciding to make a stand at Norfolk, Dunmore acted with his characteristic unwisdom. True, Norfolk was commanded by the sea, but it could also be attacked by land and a considerable force was now converging for that purpose. Since the provincial army could be indefinitely increased while the governor had only a handful of trustworthy troops, the continuance of the defense was dependent on the arrival of reinforcements from England; and this, in view of the siege of Boston, then under way, was not an immediate probability. Dunmore had small chance of holding the town. He might have been justified, however, in making the effort provided he had no other resort, no stronger position. But he did have it. There was one part of the colony where the party commanding the sea might hold out indefinitely and that was the Eastern Shore, the peninsula jutting down from Maryland. This section, the "Kingdom of Accomac," displayed little more patriotic enthusiasm than Norfolk, and Dunmore, with his fleet and his few regulars, could have overpowered the resistance in the southern end of the peninsula, Northampton, and have secured a base of operations from which it would have been difficult to dislodge him. As long as the British fleet swept the Bay, the Virginians must have had to make a great *détour* through Maryland in order to reach him.

The Northampton Committee, realizing the peril of the Eastern Shore, feared and expected that Dunmore

would descend upon it.¹ But, fortunately for Virginia, the governor preferred to gamble on the chance of being able to thwart the superior numbers of his enemy by some lucky blow. Possibly, too, he felt that withdrawal from Norfolk might be fatal to his prestige. At all events, he decided to hold his ground.

Great Bridge, where he hoped to check the provincials, was the most important strategic point near Norfolk. The South Branch of the Elizabeth River, running in a southeasterly direction, flows languidly through a marsh and was here spanned by a bridge, from which causeways stretched in both directions to firm ground. Two islands rose above the swamp at the ends of the bridge: on the one to the north Dunmore had built his fort; the other contained only a few shanties. The stockade was supplied with two four-pounders and several swivels and wall-pieces, and was garrisoned by runaway negroes officered by sergeants of regulars and Scotch Tories from Norfolk.² Woodford, advancing from Suffolk about the first of December, reached Great Bridge and took position on the south side of the river. Immediately the cannon of the fort opened on the provincials, who replied with rifle fire. One Virginian was killed; the loss on the other side was unknown, but probably greater. Desultory skirmishing went on for several days along the banks of the river from Great Bridge towards Norfolk, and both parties attempted to seize and hold all the boats on their side; the provincials to secure a means of passing Great Bridge, the loyalists to prevent

¹ *Virginia Magazine of History and Biography*, xiv, 250.

² *Miscellaneous Papers, 1775-1776*. Woodford's letter of December 4, 1775.

any such flank movement. Woodford, who had cannon coming up with the North Carolina reinforcement, was reluctant to force the passage of the stream in the face of the enemy, and threw up breastworks near a church some distance back from his end of the causeway. Seeing that the houses on the south island furnished excellent cover for riflemen in a contest with the fort, some slaves crossed the river in the night of December 3, 1775, and set fire to them. The following night Woodford retaliated for the burning of the houses by sending across the river a scouting party which fired a building, killed one or two negroes, and took several of them prisoners. The provincial officers were anxious to execute the slaves by way of example, but the commander decided to leave their fate to the convention.¹ Two nights later, on December 6, Woodford sent another detachment across the river to attack the enemy's boat guards lower down stream. The riflemen surprised a mixed force of whites and blacks and routed it with a loss of five killed and several wounded and prisoners.²

Finally, the governor, when he found that the post at Great Bridge was seriously threatened, sent his regulars out from Norfolk to attack the colonial force. His fortifications back of the town were now pretty well completed and mounted about fifteen pieces of artillery. He had also made every effort to raise recruits: Joshua Whitehurst and Charles Henley, two prominent Tories, were dispatched through the country with an armed party, to order the militiamen into Norfolk and to lay requisitions

¹ *Miscellaneous Papers, 1775-1776*. Woodford's letter of December 5, 1775.

² Woodford's letter of December 7, 1775.

of money and supplies upon people of means. Few men were obtained, though probably a good deal of plunder rewarded the raiders.¹

The British force at Great Bridge numbered about 500 men, but only the 200 regulars of the Fourteenth Regiment were trustworthy; the 300 negroes and loyalists served chiefly to swell the array. Woodford's command contained about 700 men; of whom 430 belonged to the Second Regiment and the rest were minute-men.² A skirmish-line of provincials occupied earthworks thrown up along the edge of the swamp, about 150 yards from the bridge: the main force lay encamped near the church several hundred yards farther back.

Woodford's position, approachable only by a narrow causeway, offered in that day of short-range firearms the best possible advantage to the defenders and every disadvantage to the attackers, who had to advance in closed file and without opportunity to deploy. Nevertheless, the regulars received orders to cross the bridge and take the breastwork by storm.

On the morning of December 9, 1775, the colonial troops awoke to the discharge of cannon and musketry from the fort. A lull followed, and then were heard the voices of the British officers calling their men to arms. Presently the enemy's force, with the regulars in front and the loyalists and negroes in the rear, crossed the bridge to the south island. A picket stationed there by Woodford was soon driven in and the remaining houses set ablaze. Meantime the Virginians in the trenches were keeping up a brisk

¹ *Miscellaneous Papers, 1775-1776*. Titus Meanwell's letter of December 7, 1775.

² Woodford's letter of December 10, 1775.

fire and some little confusion ensued among the Tories and negroes. Leaving them behind on the island, 120 regulars under command of Captain Fordyce advanced resolutely along the causeway leading to the earthworks. These were held by 100 riflemen, and the officer in charge ordered them to reserve their fire until the enemy came within fifty yards. At this range the provincials opened with deadly effect, sweeping the causeway almost from end to end. Fordyce, though wounded, continued to lead on his men until he went down struck by a dozen balls. The surviving British, unable to face the withering fire, fell back precipitately to the island, where they rallied and replied to the Americans with two field-pieces that had been hauled across the bridge from the fort. As soon as he saw the repulse of the regulars, Woodford brought up his main force to the entrenchments, and the British thereupon retreated over the bridge into the fort.

Woodford, with his habitual caution, awaited another attack, but the abandonment of the fort on the night after the engagement showed the completeness of his victory. Although the action had been a mere skirmish as regards the numbers engaged and the losses, it had important consequences. Nearly all the regulars had been killed or wounded, and the loyalists and negroes were demoralized. Of more consequence still, Dunmore himself was utterly dismayed by the catastrophe and abandoned all thought of further defending Norfolk.

The next day 200 North Carolinians arrived, bringing the patriot force up to nearly 900 men. On December 12, another detachment of North Carolina militia, led by Colonel Robert Howe, joined the Virginia army. On Decem-

ber 11, Woodford had issued a proclamation to the people of Norfolk and Princess Anne disclaiming any intention of molesting those who had taken the oath of allegiance to England, but at the same time he took care to send a force to Kempsville to seize all persons leaving Norfolk after the action at Great Bridge.¹ A number of Tories and British deserters were arrested, among them a Scotch loyalist named Hamilton, who had served at the fort. By way of punishment, Woodford handcuffed him to a captive black.

The joint force, under Woodford and Howe, marched on Norfolk, something more than one thousand strong. It met with no sign of resistance and entered the town in the night of December 14, 1775.² In passing through the dark streets the troops were fired on and three men were wounded, but Dunmore, with his remnant of regulars, his runaway slaves, and a number of Tories, had fled aboard the ships, which still lay in the harbor. More than a hundred prisoners, mostly loyalists and negroes, were the fruits of the occupation of Norfolk: some of them were sent to Williamsburg by a court of inquiry for trial before the convention then sitting. The American commanders offered protection to the townspeople on condition of immediate submission, and no depredations seem to have been committed by their soldiers. Nevertheless, the general feeling in Norfolk favored the royal cause, and the magistrates carried a copy of Woodford and Howe's proclamation to Dunmore on board his ship. Meanwhile Woodford made no effort to annoy the ships lying a little distance offshore, though the riflemen patrolled

¹ Woodford's letter of December 10, 1775. ² *Ibid.*, December 14, 1775.

the harbor and captured a snow carrying salt to the fleet.¹

For some days the ships in the harbor and the troops along the shore were satisfied to watch each other quietly; the people, uncertain of the outcome, cautiously refrained from showing partisanship on either side. Woodford reported that they were thoroughly disaffected without having any inclination whatever to fight: only a few gentlemen received the provincial troops with any cordiality.² Meanwhile distress reigned in the fleet, whither a number of loyalists had hurried with their wives and children at the news of Woodford's approach. The warships, ill-prepared in the best of times for passengers, at this juncture lacked everything to make life comfortable; and the women and children suffered greatly. Finally, the harassed loyalists petitioned the American commanders for leave to come on shore. The latter answered that the women and children might land on certain conditions, but that the men would be held as prisoners subject to the judgment of the convention in their cases. Few Tories were willing to accept such terms.

Through the last days of the year the hostile forces continued to do nothing but watch each other. The British ships still received supplies from the town by landing boats at a distillery and ropewalk on the outskirts and at other points. Howe recommended that these places which served as supply posts be destroyed, but nothing was done. Dunmore, on his part, had the effrontery to complain to the town authorities that his boat crews had met with ill-treatment. Strange as it may seem, a town meeting

¹ Woodford's letter of December 17, 1775. ² *Ibid.*, December 16, 1775.

discussed this complaint at length, and a motion was made to allow boats to come ashore for provisions, but it was rejected. Dunmore can hardly have been so foolish as to suppose that the colonial commanders would allow him to receive supplies from Norfolk unopposed; it is probable that he merely sought an excuse for the action he had already determined on. At all events, early in the afternoon of January 1, 1776, the British ships, drawn up in a line before the town, opened fire on it with more than a hundred guns. Under cover of the cannonade, which lasted with little intermission throughout the afternoon and night, sailors landed and set fire to houses at several places. The riflemen posted along the water-front drove off the landing-parties, but not before the wooden buildings near the wharves were blazing. From time to time, in the confusion of the scene, boat crews came ashore, only to be driven back immediately to the water. The defenders suffered no greater loss from the bombardment than a few men wounded, but several of the wretched inhabitants, rushing out through the streets in the winter night to get beyond the range of the guns, were killed by cannon balls.¹

The fires, begun by balls or landing-parties, spread with great rapidity, because the provincial soldiers, instead of attempting to extinguish them, seized the opportunity to plunder and destroy on their own behalf, determined, as they said, "to make hay while the sun shines."² Breaking into rum-shops and warehouses, many of them soon became drunk and went in gangs from house to house,

¹ *Miscellaneous Papers, 1775-1776*. Robert Howe's letter of January 7, 1776.

² Legislative Petitions. Norfolk (B4328).

smashing in doors, dragging out spoils, and then applying the torch. Household goods of every kind were sold in the streets for a song to anybody willing to buy. The destruction caused by the ships was confined to the waterfront, but the Virginia soldiers involved the whole place in the catastrophe. On January 2, 1776, when the firing had ceased, the riflemen continued the work of rapine without interference on the part of their officers — apparently even with their connivance. Only on the third day did Woodford put an end to the sack by forbidding the burning of houses under severe penalty, but by that time more than two thirds of Norfolk was in ashes. In February, 1776, the remainder was destroyed by order of the convention in order to deprive Dunmore of shelter.

The responsibility for the burning of Norfolk rests upon both Dunmore and the provincial troops. Although, according to the evidence, the riflemen wrought by far the greater share of the ruin, the governor began the work of destruction. The testimony, indeed, is very conflicting, but the statements of Woodford and Howe, who wished to absolve themselves from blame in a discreditable business, are probably more completely *ex parte* than those of the numerous witnesses who gave detailed accounts of the havoc made by the American soldiers. Furthermore, the mayor and council of Norfolk declared to the assembly, on November 16, 1776, that most of the destruction was the work of the troops.¹ The commissioners appointed by the government in 1777 to investigate the matter substantiated this account with striking figures. They declared that Dunmore had burned 32 houses on November 30,

¹ Legislative Petitions. Norfolk (B4188).

1775, and only 19 on January 1, 1776. The soldiers, on the other hand, had destroyed 863 houses, and 416 more had been destroyed by order of the convention.¹

The bombardment of Norfolk was a crowning piece of stupidity. Dunmore could not have hoped to drive out an overwhelming and mobile force by a mere cannonade and he had no troops to use in following up this act of aggression. Under such circumstances, his firing on the town was a mere act of revenge for being driven out of the colony — the mean retaliation of a man unable in any other way to return fancied injuries. The full measure of his folly may be seen when it becomes evident, in the light of the commissioners' report, that he played into the hands of his enemies. Norfolk was the one place in Virginia where the king had supporters and where the royal governor had been given a warm reception; and, when he turned his guns against it, he insured the ruin of his own friends. An open seaport and difficult of access from the interior, it could have been kept from falling into British hands only by the constant presence of a large force, which the colonial government could not afford to maintain in an isolated position. Sooner or later a fleet with troops on board was bound to sail in and turn Norfolk once more into a busy port and a center of British influence. This the Williamsburg authorities saw clearly enough, but it is most unlikely that they would have ventured in cold blood on the odious course of destroying the town as a precautionary measure. That Norfolk, when the fleet at last arrived, was a mere heap of ruins instead of a convenient base of operations on the Southern coast was due to Dun-

¹ Report of Commissioners. MS. in Virginia State Library.

more's ill-considered anger, which gave his astute opponents the chance to do their work and cast the odium on him. Dunmore was destined always to be outwitted. Howe expressed the sentiment of the provincial army a few days later in reporting that his men had burned the obnoxious distillery where the British landed. The destruction of Norfolk, he said, would be beneficial to the public. It was a place the enemy could seize at any time, inhabited by a population wholly given up to trade and without devotion to the American cause. If held by the British, it would have continued importing prohibited goods and thus would have neutralized the Continental Association in two colonies.¹ There was general satisfaction that it was no more.

The relative position of the ships and the troops remained the same after the destruction of the town; the fleet rode at anchor and the riflemen skulked along the shore looking for shots. Occasional brushes between them and landing-parties of sailors relieved the tedium. On January 21, 1776, two of the men-of-war, the Liverpool and Otter, opened a heavy fire on the ruins to cover a party which set fire to a few buildings still standing near a wharf. A sharp skirmish followed between sailors and "shirtmen" in which both sides lost a number killed and wounded.² At last, on February 6, 1776, the provincials abandoned Norfolk, after sending away the poor people still living there, burning all the remaining houses and demolishing Dunmore's entrenchments. The troops were quartered at Kempsville, Great Bridge, and Suffolk, points more

¹ Robert Howe's letter of January 6, 1777.

² *Virginia Gazette*, January 26, 1776.

accessible than Norfolk and easier to provision.¹ Shortly afterwards the frigate Roebuck arrived with some troops and enabled Dunmore to take possession of the village of Portsmouth across the Elizabeth River from Norfolk.² From this place as a base he sent out along Chesapeake Bay tenders and ships, which took a number of American vessels as prizes and occasionally made raids on the plantations along the water. In spite of these successes, however, Dunmore's position was most precarious, as provisions were scarce and jail fever raged in the fleet. Nor did the tenders on their marauding expeditions always have it one way. In April, 1776, a tender captured a New England schooner in the Rappahannock, but was attacked in turn by sailboats manned by people of the neighborhood and escaped with difficulty after abandoning the prize.³ Moreover, two of the ships, the Liverpool and Roebuck, suffered rough handling in an engagement with row-galleys in the upper Chesapeake.

The patriot government now prepared to make another effort to rid the country of Dunmore. On March 29, 1776, Charles Lee, major-general in the Continental service, arrived at Williamsburg to take command of all the forces in Virginia, Continental and local. He immediately began to organize his troops and attempted to raise a cavalry force, which was especially needed. When the organization was sufficiently complete, he advanced to Norfolk, and on May 20, 1776, fought a skirmish from the shore with the ships. A few days later, Dunmore, after dismantling some new entrenchments he had raised, sailed away with his whole following.⁴ Charles Lee had mean-

¹ *Virginia Gazette*, February 9, 1776.

² *Ibid.*, February 23, 1776.

³ *Ibid.*, May 3, 1776.

⁴ *Ibid.*, May 24, 1776.

while gone to Portsmouth, where he busied himself in crushing disaffection. Washington's eccentric second in command excited as much amusement by his long green trousers, called "sherry-vallies," and his litter of dogs¹ — habitual sharers of his bedroom — as his supposed military talents and experience aroused admiration. One of his first acts on reaching Portsmouth was to urge the Committee of Safety to deport the inhabitants of Princess Anne in order to break communications between the countryside and Dunmore's fleet. The committee thereupon decreed that all people living within a line drawn from Great Bridge to Kempsville and thence to the ocean should remove into the interior, as well as all the people within the two counties who had repaired to Dunmore's standard. Dissatisfied with this measure, which was not carried out in all its harshness, Lee ventured to demolish the houses of several well-known loyalists in Portsmouth by way of salutary example, as he reported to Edmund Pendleton in a letter of May 4, 1776: —

SIR:

As I consider it my duty to make a report of every transaction that is not merely and purely military to the Committee I hope They will excuse my not having done it before, but as They were yesterday so employed in the busyness of the Princess Anne Petition, I thought it might be troublesome to enter upon the subject.

As I found that the Inhabitants of Portsmouth had universally taken the oaths to Ld Dunmore, and as the Town was, I believe justly, reputed the great channel through which his Lordship received the most exact and minute intelligence of all our actions and designs I thought it incumbent on me and agreeable

¹ *Lower Norfolk County Antiquary*, I, 99.

to the spirit of your instructions to remove the People without exception, for even the Women and Children had learn'd the art and practic'd with address the Office of Spies, — a considerable quantity of valuable articles were found in the houses of Mes'srs Sprowl, Goodrich and Jemmison as molasses salt and other things were wanted by the Public — I have order'd the Officer commanding the Party to make out an inventory of these articles which are to be laid before your Board.

As the Town of Portsmouth will afford so convenient shelter and quarters to the Enemy on the supposition They make this part of the world their object, it wou'd (strictly speaking) be perhaps right and politick to destroy it totally — but I thought it a matter of too serious concern for me to execute without the injunction or sanction of the Committee — the houses indeed of some of the most notorious Traitors I ventur'd to demolish with the view of intimidating the neighborhood from trifling any longer or flying in the face of your ordinances — for unless I have been grossly misinformd these People have been Encouraged from no examples having been made, into a most barefaced open intercourse with the Enemy — Sprowls Goodrich's Jemmisons and Spaddens houses have on this principle been demolishd — the last Gentleman (Spadden) is now a Prisoner at Suffolk accused and I am told convicted of having been on board Ld Dunmore's fleet, since his acquittal by the Committee of Norfolk.

As We had undoubted intelligence that Dunmore's Fleet and Army were amply and constantly supplied with provisions and refreshments of every kind from that tract of Country lying between the Southern and Eastern Branches, as well as from Tanners Creek, and that the positive ordinance levell'd by the Convention against this species of treason was totally contemn'd and disregarded and as it is a notorious truth that from an habitual commission of any criminal act be it ever so heinous, He who commits it at length persuades himself that there is no crime in it at all — These Worthies not only every day more constantly and openly carried on this dangerous and pernicious commerce but even (as it is said) justified it in their conversation. I say, Sir, considering these circumstances, it appear'd to me absolutely

necessary as it did to the other Officers and the Committee of Gentlemen from Suffolk to take some vigorous step on the spot which might intimidate the whole knot of these miscreants from this pernicious commerce — a Mr. Hopkins infamous for his principles and conduct and who has a son now a soldier in Ld Dunmores Army was fortunately the Man detected — He was seiz'd in his return from the Fleet where He had been with a supply of provisions — He at first prevaricated and perjured himself very handsomely, but at length, not indeed untill He was impeachd by his Companion, confess'd — the sentiments of the Committee and of the other officers concurring with my own — We determined after having secur'd the furniture to set his house on fire in his presence — this step was not perhaps consistent with the regular mode prescrib'd of proceeding — but there are occasions when the necessity will excuse a deviation from the regular mode of proceeding — and this I hope will appear to the Committee to be one of these occasions when irregularity is excusable — I must, here, Gentlemen, beg leave to repeat my assurances that if ever in my military capacity I shou'd fall into any measure which is more properly within the Province of the Civil, it must entirely proceed from mistaken inadvertency, never from design — and that when this happens, so far from being offended at the admonitions, or even reprimands of the Committee that I shall think myself obliged to them.¹

The effects of this patriotic arson are not known, but Dunmore had ended his career in Virginia, and Toryism, never very strong as a force, was now completely crushed. The governor found an opportunity to make a final blunder before vanishing from the scene. Sailing out of Norfolk Harbor, with ships crowded with runaway and stolen negroes and wretched refugees, he cast anchor at Gwynn's Island off the Gloucester shore. On this island — sufficiently large for prolonged occupation — Dunmore landed

¹ *Miscellaneous Papers, 1775-1776.*

his disease-stricken crews and threw up fortifications, forgetful of the fact that his ships lay within easy cannon-range of the mainland. The appearance of Dunmore's sails was the signal for a muster in strength of the local militia. It lacked the means for immediate attack, but James Barron, captain in the Virginia navy, dealt Dunmore a heavy blow by capturing a transport filled with Highlander troops bound up the Bay for Gwynn's Island. This was the prelude to the end. By the beginning of July a large number of militiamen had gathered opposite the island, commanded by Andrew Lewis, an officer of great experience in Indian warfare and of much natural military talent. On July 9, 1776, Lewis opened a cannonade on the fleet lying off the island and on the entrenchments. The ships suffered severely from the fire and were soon forced to slip cables and hurriedly put out, leaving behind most of the effects that had been landed.¹ Want of boats alone prevented the Virginians from pushing over to the island and taking many prisoners. Next morning, when they had gathered enough boats to visit the island, they were horror-stricken to find it literally covered with the dead and dying, the victims of smallpox and jail fever. The dirty, crowded ships had become floating lazarettos.

Exiled from Gwynn's Island, Dunmore tried to land on St. George's Island in Maryland, but was beaten off by militia. He plundered and burned several plantation houses along the Potomac and again attacked St. George's Island, with no better luck. Despairing of finding a refuge in the Chesapeake, he stood down the Bay with all his fleet and sailed out of the Capes and American history.

¹ *Virginia Gazette*, July 12, 1776.

So intense was the dislike Dunmore inspired that he remained for several generations under the calumny of legend. Although he enjoyed considerable popularity before 1775 and entertained at the "Palace" in Williamsburg, where the local gentry loved to meet his charming wife and swains to worship his young daughters, he had by 1776 become an enemy to society, the instigator of slave insurrection and the robber and plunderer. As usual in such cases, his sufficiently numerous errors and sins did not satisfy. Tradition made him out the secret betrayer of the colony in the Indian war of 1774, who incited the savage to lay waste the frontier in order to weaken resistance to the imperial authority. And in this guise of anarchist and assassin the last English governor has come down almost to our own times.

CHAPTER IV

THE COUNTY COMMITTEES

THE easy triumph of the Revolution in Virginia was primarily due to thorough organization. The sentiment of the colony was, beyond doubt, overwhelmingly patriotic, but it is conceivable that a considerable loyalist, or neutral, faction might have existed if public opinion had been less forcefully translated into action. The county committees, composed of prominent and experienced men working with a perfectly definite aim, crushed disaffection in the beginning with a ruthless efficiency that left British sympathizers no alternative but exile or quiet submission.

Local committees of correspondence sprang up in Virginia in 1774. Late in the year, in conformity with the recommendation of Congress, county committees were organized to carry into effect the Continental Association, that boycott designed to force the English government to terms by loss of trade. The earliest of these local committees arose in the eastern counties, showing that no class was so eager to support Congress as the large landowners. Reluctant as they were a year later to go to war, they were now foremost in the boycott, because to their minds it was legal and entirely consistent with attachment to the crown. These tidewater planters, men trained in politics and affairs, inaugurated the committee system and the commercial resistance to Britain and thus inadvertently led the colony into the very thing they dreaded. The local

committees played an important part in the life of the community from the very start. Their authority, if not legal, was yielded by general consent and was extensive in scope. They were chosen by the freeholders of the counties assembled at the court-houses, virtually in the same way that the Burgesses were elected; and these mass meetings seem to have passed off usually without incident — much more like the routine pollings for members of the assembly than incipient rebellion. The committees, consisting for the most part of prominent and trusted men, stood for law and order even though they themselves were untrammelled by ordinary legal restraints. The selections generally represented spontaneous popular choice, but sometimes they were arranged after practical political methods with which the present generation is only too familiar. Thus, some of the people of Chesterfield in August, 1775, complained to the convention that the county committee had been elected by a mere handful of voters, who did not clearly understand its importance, and that as a consequence several unworthy members had been chosen. They therefore requested another election.¹ Similarly, in Hanover the complaint arose that tellers of the ballots at the election took it upon themselves to exclude persons actually elected in favor of others not receiving a majority.² Usually in the eastern counties men of the conservative faction that had so long ruled Virginia predominated in the committees. This was fortunate for the Revolution. Begun under the auspices of the upper classes, the body of the people came into it as a matter of course, and with few

¹ Legislative Petitions. Chesterfield (A4072).

² *Journal of the May Convention of 1776*, 24.

misgivings. Furthermore, the local rulers were able to employ ostracism — at first their only weapon — with far greater restraint and success than men without position could possibly have done. In their hands it proved a formidable instrument in the early stages of the Revolution for suppressing faint-hearted royalists and bringing about at least a show of harmony.

The committees began their work with great energy and admirable system. Counties were divided into districts and each district was assigned to a subcommittee of the county committee. Owing to the care for detail observed, practically the whole population of the colony was subjected to an espionage, which, though it employed no regular spies, was exceedingly efficient. Not only violations of the Continental Association, but disaffection of any kind, even careless words, met with prompt investigation. The only alternative for the offender, besides submission, was exile; for exile naturally followed as the result of the odium cast on those openly published as hostile. In the vacation of regular tribunals, closed by the Revolution, the committees not only exercised the functions of a court of wide jurisdiction, but enjoyed executive powers as well. Since they ordinarily included a considerable proportion of justices of the peace, the suspension of courts had very little effect on good order. Seldom has a great political revolution been attended with less violence than the close of the British administration in Virginia and the opening of the republican era.

The first case of disaffection acted on by a committee, so far as known, was not a prosecution for a violation of the Continental Association, but for an expression of opin-

ion. On November 8, 1774, the Westmoreland Committee, including some of the most prominent persons in the colony, sat in judgment on David Wardrobe, a Scotch school-teacher, who had written home rather indiscreetly about local conditions. Through inadvertence or a misunderstanding, the letter was published, and was now laid before the committee as a contribution to the columns of a Glasgow newspaper. Wardrobe had charged the planters with taking the lead in one of those effigy-burnings so dear to the heart of the eighteenth century, and had described the common people as showing no enthusiasm for the roasting of Lord North. There was sufficient truth in the charge to exasperate the committee, which summoned the school-teacher to appear before it. He admitted that the letter was partly his, whereupon the committee, preserving that euphemistic form so characteristic of the leaders of the Revolution, "expressed a desire" that the vestry of Cople Parish should deprive Wardrobe of the use of the vestry-house as a schoolroom and that parents should withdraw their children from his school. Wardrobe was further ordered to write a retraction of his letter and to appear again before the committee at a later date. He wrote the apology, but not in terms satisfactory to the committee, and failed to make his appearance at the appointed time; so that the gazettes presently recommended that the poor pedagogue be "regarded as a wicked enemy of America and be treated as such."¹

The ruin of this Scotchman was sufficient evidence of the

¹ *American Archives*, I, 970. Another early case was that of Paul Thilman, a notice concerning which, dated November 12, 1774, was published in the *Virginia Gazette*.

unpleasant results likely to attend a free expression of opinion, even in a private letter. The committees, so prompt to punish unkind criticism of Revolutionary methods, were of course not behindhand in enforcing the boycott provisions of the Continental Association. The slightest violation of any of the articles brought an immediate summons to the offender to appear before the committee and explain his conduct. Those summoned seldom failed to come and defend themselves as in a court of law, for failure to appear or to show proper contrition meant being published in the newspapers as "inimical to the liberties of America" — a serious penalty. The great majority of people acquiesced in the repressive methods of the committees, or at least complied outwardly with their demands. Country gentlemen enforced the Association; but its burdens fell chiefly on the merchants, a small but fairly prosperous class beginning to be of some importance in the colony. The latter could not be expected to show any great enthusiasm for a measure so ruinous to them as the Association; yet they were powerless to resist in the face of the numbers and organization of the planters, who were bent on worsting the English government by means of a commercial war and at any cost. The great majority of Virginia merchants were attached to Great Britain, no less by interest than by their Scottish birth and training. They had come to America to make their fortunes, and had settled in Norfolk, or in some of the other small towns scattered through the colony, or ran stores at cross-roads and endured the condescension of the planters, who looked on trade much as did their squire brethren in old England. These traders faced with a natural lack of ardor the pros-

pect of indefinite suspension of business and probable ruin. The political thinkers were the planters. Living a life of comparative leisure and educated chiefly in the direction of law and politics, they drew from the pages of Locke and Sidney theories of republicanism and precedents for revolutionary activity. This all-powerful agricultural interest was able to overawe the merchants, who were quite as hostile to the Revolution as the commercial classes in the Northern colonies, but had no large towns like Philadelphia or New York to serve as centers of influence.

The attempts of merchants to evade or resist the Association were promptly punished, as the scanty notices in the gazettes grimly show. It was practically impossible to escape the minute inspection of the subcommittees, which were kept well informed of the conduct and sentiments of every individual in their bailiwicks. Nor did they hesitate at the most intrusive prying in order to enforce the Association. To prevent any advance in the price of goods — a cardinal sin in the Association catechism — the committeemen rode from store to store examining ledgers: increase in prices or refusal to open books they punished by warning people to have no further dealings with the offenders. Thus in Caroline, on December 16, 1774, the subcommittees appointed to inspect merchants' books reported that some of the merchants had willingly shown their accounts and had been found to observe the Association, while others had refused to allow their books to be seen and were suspected of disobedience. The county committee then warned the people, "as they would avoid being considered the Enemies to American Liberty, not to have any Dealings with these merchants until they shall give

the Satisfaction required.”¹ Under this threat the obstinate merchants allowed their books to be examined and were found to have obeyed the Association.² In Charlotte a merchant who refused to open his books for examination was punished by having his customers warned against him. Tea, of course, was anathema, both to the Association and to patriotic citizens. In Northampton the committee assigned Littleton Savage to receive such tea as remained in the county, which the people surrendered to the amount of four hundred pounds. Some gentlemen, in their enthusiasm, brought their tea to the court-house, requesting that it be publicly burned, “in which reasonable request,” the narrator states, “they were instantly gratified.”³

A great and often involuntary violation of the Association was the reception of goods after the date fixed as the limit for importation. There were many such cases. In Henrico, Robert Pleasants informed the committee that he had received imported goods after the time expiration, whereupon the committee ordered that his goods, together with other lots, be sold as directed by the Association.⁴ The same thing happened at Hampton, where George Graham delivered up goods recently come to him.⁵ Goods were also sold in Norfolk. Indeed, in the early part of 1775 the Association seems to have been faithfully enforced in the last-named place and to have so continued as long as the local committee exercised supervision. In deference to the strong patriotic feeling Captain Howard Esten, about to put to sea, applied for a certificate that he had

¹ *Virginia Gazette*, January 14, 1775.

² *Ibid.*, February 4, 1775.

³ *Ibid.* ⁴ *Ibid.*, February 11, 1775.

⁵ *Ibid.*, January 28, 1775.

taken nothing on board his ship except a ballast of lumber.¹ Sales of condemned goods seldom brought more than cost and often less, but occasionally they yielded a profit, which was devoted to the Boston sufferers. The profit on the sale in January, 1775, of Andrew Woodrow's imports into King George amounted to £19 14s.² The case of Dr. Alexander Gordon, of Norfolk, attracted much attention. He had received a consignment of medicines that he refused to turn over to the local committee for sale, insisting on keeping it for himself. The Norfolk Committee consequently advertised him as a violator of the Association. It meted out even more severe condemnation to John Brown, a Norfolk merchant, who — strange namesake of him of Ossawatimie — violated the Association most flagrantly by importing slaves and concealing their arrival. Upon the discovery of this importation Brown denied having given the order for the purchase, a statement subsequently proved false by his letter-book. The committee then declared that he had "willfully and perversely violated the Continental Association."³ Captain Sampson, of the snow Elizabeth, was likewise advertised for violating the non-importation regulation. He had brought in a cargo of salt, and the Association required that cargoes should be carried back whence they came: instead, the captain attempted to carry away a shipload of lumber, and, on being summoned by the committee, appealed for protection to a British warship in the harbor. The committee immediately denounced him as an enemy to American liberty.⁴

Exportation was watched as carefully as importation.

¹ *Virginia Gazette*, January 14, 1775.

² *Ibid.*, January 28, 1775.

³ *Ibid.*, March 25, 1775.

⁴ *Ibid.*, April 15, 1775.

The Nansemond committee in August, 1775, tried two merchants of Suffolk, Donaldson and Hamilton, on the charge of shipping provisions to Boston contrary to a non-exportation resolution of the New York Committee of Correspondence which had been acceded to by several other provinces. The merchants proved that their shipment was intended for Antigua, but that the brig carrying it had been taken into Boston Harbor by a British cruiser. The same men were tried on a second charge of shipping butter and hemp to Boston in April, 1775, and again acquitted, as they showed that the New York importation resolution had not been passed at that date.¹ Prices of commodities were also watched with jealous eyes. In Surry a complaint was lodged against Robert Kennan for selling salt, a necessity difficult to obtain, at an advanced price. Upon Kennan's acknowledgment of his fault the committee recommended people not to deal with him.²

Merciless as the committees were in enforcing the Association, it does not appear that they were often unjust. On the contrary, they sometimes acted in defense of the accused whom they believed innocent. The case of John Parsons was not singular: he was a shipbuilder, and was reputed to have landed and stored goods at Urbanna in Middlesex. The Middlesex Committee on examination found the tale to be false and published a statement in the gazettes exonerating Parsons.³

If the offenses taken cognizance of by the county committees had been limited to those set forth in the Continental Association, little more could be said in criticism of

¹ *Virginia Gazette*, August 26, 1775.

² *Ibid.*, August 22, 1775.

³ *Ibid.*, June 19, 1775.

these bodies than that they discharged their duties somewhat over-zealously. Even this criticism would have to be qualified, for revolution by its very nature cannot tolerate differences of opinion: it means the victory of a part of the population over another part — a triumph of organization no less than of arms. The local committees in Virginia, as well as in other colonies where political dissent was potentially dangerous from a military point of view, were driven to suppress loyalist opinion. Committees summoned offenders for intemperate speeches and punished them as ruthlessly as for actual violations of the Association, which in time came to be regarded as a law rather than a boycott. Examinations of persons for political opinions occurred in all parts of the colony, proving that there were everywhere people attached to Great Britain. Social position and wealth — in all other ways a very great power in Virginia — failed usually to protect such offenders, who long before the Declaration of Independence were regarded as traitors. The first test of Revolutionary politics hinges on the Continental Association. It was not enough to obey that promulgation; strict patriotism demanded a willingness to sign it and the use of respectful language regarding its often vexatious demands. Austin Brockenbrough, who hastily put his name to the Association and afterwards repented at leisure, was summoned for the offense of attempting to prejudice people against it. Losing his temper, he defied the committee and was ordered to appear before it next court day. When he failed to come, he was published as an enemy.¹ In Middlesex, Thomas Haddon was advertised as “inimical” for refusing

¹ *American Archives*, 1, 337.

to sign the Association and casting reflections on it.¹ John Saunders, a law student, who was either aloof in spirit or a victim of a legal conscience, refused to sign patriotic resolutions drawn up by the Princess Anne meeting of July, 1774, called to choose delegates to the August convention. Later, when the Virginia Association was read to the people, he again refused to conform. As a last test, the Continental Association was tendered him, and this he likewise declined, alleging "that the way of procedure was illegal." This led the county committee to appoint a delegation to wait on Saunders and urge him to retract his statement: on account of his youth, the committee averred, it "desired to deal gently with him." Asked if his words had not been inadvertently spoken, he replied that they had not. A friend then persuaded the obstinate loyalist to put his name to the Association, but he immediately added a big "No"; and the committee, worn out, branded him as a public enemy. Benjamin Dingly Gray, another non-associator, and Mitchell Phillips, a militia captain who had exerted his influence to prevent men from signing the Association, shared his fate.² Allan Love, brought before the Brunswick Committee on the charge of "uttering injurious and reproachful expressions," was acquitted. The Pittsylvania Committee, in May, 1776, summoned one John Pigg before it on the complaint that he had drunk tea and exclaimed against the measures of Congress. Pigg did not come and was declared "a traitor to his country and inimical to American liberty."³

The clergy of the Anglican establishment generally sym-

¹ *American Archives*, 1, 668.

² *Ibid.*, 1, 76.

³ *Virginia Gazette*, June 1, 1775.

pathized with¹ the colonists, but were vexed somewhat by dread of rebellion against the head of the Church. Occasionally they came into conflict with Revolutionary sentiment. The most noted case was that of John Agnew, minister of Suffolk Parish, Nansemond, who treated his congregation to a sermon from that text so dear to constituted authority, "Render unto Cæsar the things that are Cæsar's."¹ He was expelled in consequence by his parishioners, who doubtless remembered that Cæsar had his Brutus — and very properly, according to Patrick Henry. The Nansemond Committee published Agnew as "inimical" and his conduct was judged so serious as to be referred to the Committee of Safety, which ordered him to provide security for his good behavior. Not being able to do this in any other way, the minister offered to turn over his land and slaves, an offer the committee accepted with a benediction: "Tis hoped all remembrance of his former conduct be forgotten, and that his future will be such as to recommend him to y^e enjoyment of peace and harmony with the society." Somewhat different was the case of John Wingate, an Orange minister, who suffered from a tyrannical use of the inquisitorial power of the county committee. Wingate had in his possession certain pamphlets reflecting on Congress, which the committee, "desirous to manifest their contempt and resentment of such writings and their authors," requested him to surrender. He refused on the ground that the pamphlets did not belong to him. The committee promised to make good the loss to the owner and burned them.²

¹ *Virginia Gazette*, March 25, 1776, and J. B. Dunn's *History of Nansemond County*.

² *Virginia Gazette*, April 15, 1775.

Passing beyond expressions of opinion, committees attempted to regulate the lives of people to an extraordinary degree, and even went to the point of trying to enforce literally the article of the Association forbidding gambling. What is stranger still, a community given up to horse-racing and passionately devoted to card-playing, actually endured this puritanical interference in private affairs. Committees published a number of men for gambling, but inclined graciously to pardon those who expressed contrition. The committees not only regulated the opinions of their respective counties, but coöperated with other bodies in cases involving several jurisdictions. Such coöperation was made necessary by the absence in the spring and summer of 1775 of any regularly constituted officials with general powers; the local committees were the only acting official bodies. By mutual understanding committees confined themselves strictly to their own territories and carefully observed the rights of other localities. The Norfolk Committee, in May, 1775, communicated to the Prince George Committee the facts in the case of James Marsden, charged with bringing in a puncheon of linen after the expiration of the time allowed for importation and with furnishing ship-captain Fazakerly with pork by order of Captain Charles Alexander. The last-named person appeared before the Prince George Committee and apologized for his conduct. He confessed he had brought in the linen and pork inadvertently, claiming he had given the order on Marsden to pay Fazakerly conditionally on the convention's consent to the exportation of food. This examination was sent to the Norfolk Committee, which referred the case back to Prince George on jurisdictional grounds.

The Prince George Committee then decided that Alexander had violated the Association and declared him an enemy.¹ In the same way the Essex organization, in April, 1776, considered a case of importation that had already been tried by the Gloucester Committee, and, accepting the latter's verdict, published the offenders, John and George Fowler, as enemies of America.²

Local committees in December, 1774, and the early part of 1775, acted wholly on their own responsibility, with no other guide or authority than the Continental Association. The king's governor still lived in his official residence in Williamsburg and still went through the form of conducting the administration with the aid of his council. The assembly, which alone could have directed the committees, had not sat for some time and Dunmore showed no hurry to summon it. Apparently he shared the view of James II that revolutions can be impeded by legal obstacles. James II had thrown the Great Seal into the Thames: Dunmore refused to call the assembly. The county committees consequently enjoyed unlimited authority in their districts. Dunmore, much alarmed, wrote to Lord Dartmouth that the committees overhauled merchants' accounts and even went so far as to swear the men of the independent military companies to take all orders from them. The Norfolk Committee, in May, 1775, published an indignant denial of the charge of inquisition, but Dunmore had told nothing but the truth. The committees did take it upon themselves to investigate everything and they were backed by armed force. The militia system, fallen into decay since the French-and-Indian War, was replaced by volunteer companies of

¹ *Virginia Gazette*, October 28, 1775.

² *Ibid.*, June 14, 1776.

minute-men, the first of which seems to have been raised in Prince William. Several of them were organized before the end of 1774, and by the summer of 1775 thirty or more existed.¹ This force was in complete sympathy with the local committees and if necessary would have used arms in their support: a number of these companies mustered to march to Williamsburg at the time of Dunmore's theft of the powder. Modeled on the old militia system, the minute-men no more disturbed the sedate character typical of the Revolution in Virginia than did the committees composed of justices and other unmelodramatic revolutionists.

It has been observed that the county and borough committees in their first months of activity worked as entirely independent bodies, though with a harmonious purpose. The convention of March, 1775, took the first step towards the formation of a new government by recommending the adoption of a military organization based on the unobserved militia law of 1738.² It also somewhat hastened the crisis by practically closing the courts; but the colony continued under the rule of committees until August 17, 1775, when the convention elected a Revolutionary executive, the Committee of Safety. This body, under the powers granted by the convention and assumed by itself, became the central authority, occupying much the same place for the whole colony that the committees did for the counties. It gave orders to committees and armed forces and settled questions that were referred to it from the local bodies. The latter were glad to shift responsibility to a higher tribunal and rendered implicit obedience to its de-

¹ Lingley, 106-07.

² *Ibid.*, 129.

cisions. Under the control of the Committee of Safety, the county committees grew even more pertinacious and effective in rooting out and suppressing disaffection and still more drastic in their methods. Sternness was probably inevitable. The actual break with England had come and was attended by a sudden change in the attitude of many people, who were zealous enough in opposing Parliamentary taxation, but shrank from a military struggle. The convention, by a necessary war measure, now offended this element. The trading interest in Virginia centered largely at Norfolk, Hampton, and Suffolk. Hitherto it had patiently and loyally borne the hardships of non-importation, partly solaced by the privilege of exporting Virginia products to British markets. The merchants, mostly Scotchmen, at first displayed genuine sympathy for the American cause, and the Norfolk Committee was behind none in activity in enforcing the Association. But when war actually broke out in 1775 the views of many of these men changed. While believing that the colonies had grievances, they preferred to swallow them rather than to come into open conflict with Great Britain. To add further to their embarrassment, the convention, on July 24, 1775, struck a heavy blow at commerce. By the terms of the Continental Association exportation to Great Britain and her dependencies was to cease on September 10, 1775, unless the British government acceded to colonial demands. The Virginia merchants, with this limit in view, had made extensive contracts for products, chiefly provisions. To their consternation the convention ordered that no provisions be sent out of the colony after August 5, 1775, that no quantities of necessities be stored in towns near

navigable waters, and that all contracts for exportation be considered null and void. The local committees were commissioned to carry this order into effect.¹

In view of the fact that war had begun and battles were being fought in the North, this procedure was eminently wise. It was rank folly to supply the enemy with food or to store it in quantity within easy reach of his cruisers. At the same time the prohibition put a quietus on the colony's expiring trade and moved the Norfolk merchants to protest. Their petition, which was read in convention on August 1, 1775, recited their extensive contracts with planters for grain and the number of foreign ships chartered to carry it — all based on the limit, September 10, 1775, expressly set forth in the Continental Association. The convention, in stopping exportation, had acted with great haste, and "without allowing time or opportunity for the trading interest of the colony to know that such a measure was in agitation, much less to lay their objections before this Convention." Large quantities of grain and provisions would be thrown on their hands and their vessels, on arrival, must remain idle. Furthermore, the embargo gave a trade advantage to other colonies which had not stopped exportation. The appeal ended with these frank words: "If provincial Conventions undertake the regulation of continental concerns and that during a Session of the Congress itself, the only choice we have left us is to lament the violation of public faith and order, and flattered as we have been into deceitful expectations, to sit down the melancholy spectators of our own destruction." ² Twenty-eight

¹ *Journal of the July Convention of 1775*, 6.

² Legislative Petitions. Norfolk (B4186).

firms signed this document, and it doubtless expressed the sentiments of others too cautious to sign. In addition to this, the committee of Norfolk Borough instructed those of its members who were also delegates in the convention to secure a reconsideration of the prohibitory resolution. The committee, arguing that the prohibition allowed no time for business adjustment, warned the convention that it was "under some apprehension that so cheerful an obedience will not be paid to this distressing injunction, as our constituents are ever desirous to pay to all the decisions of that honorable body; and that we humbly request that the said Resolution will be repealed, at least so far as to give time for vessels that are now loading to take in their cargoes."¹ The convention sternly rebuked the petitioners. It declared that the merchants' petition reflected on the convention and tended to destroy the confidence of the people of the colony in their representatives; that the resolution had not been passed in haste, and that the merchants of Norfolk and Portsmouth could not expect measures of vital concern to the colony to be suspended until they had been consulted.

The committee of Northampton County had also pleaded against the stoppage of imports, although its language was less expostulatory and it limited its requests to a modification of the resolution. The Northampton people, according to the committee, had made contracts to deliver large quantities of maize, and reasonably wished exportation to the West Indies to continue.² This petition and that of the Norfolk Committee, in contradistinction to that of

¹ *Miscellaneous Papers of the Committee of Safety and the Convention of 1775.*

² Legislative Petitions. Northampton (B4853).

the merchants, were approved as "decent and respectful," and, in deference to them, the convention allowed exportation of maize of the last year's crop to continue until September 10, provided security was given the county committees not to ship the grain north.¹

This dispute, apparently disposed of by the convention, marks the beginning of the detachment of the mercantile interest from the colonial cause. For the remainder of the Revolution the Norfolk region never showed anything of its early patriotism and spirit of coöperation with the rest of the colony. It was a defection that might have been fraught with serious consequences but for the incompetence and tactlessness of the man in whose hands fate had placed the charge of British authority.

Through the early part of the Revolution the convention exercised supreme power. When not in session it was represented by the Committee of Safety, which acted as the executive. Among the latter's functions was that of court of appeals for the county committees, though the convention remained as a kind of final tribunal in exceptional cases. Spurred on by the Committee of Safety, the county committees worked with even greater vigor and efficiency than before. With the beginning of war the inquisitorial methods necessarily became more severe in the passage from the economic to the military stage of resistance, and disaffection was suppressed by law in place of merely being banned by public opinion. In the lower counties especially, the danger of Dunmore's presence led the committees to employ means that at other times would have seemed unworthy. Not only were speeches of disaffected persons

¹ *Journal of the July Convention of 1775*, 10.

regarded as sufficient grounds for trial, but mails were tampered with in the search for evidence. Walter Hatton, of Accomac, was brought before the county committee for writing a seditious letter, and, at his own request, was sent on to the Committee of Safety for examination. On his tendering an apology for the letter, the committee dropped the case against him.¹ In this letter Hatton had made the following statement: —

It is now, and has been for some time past, an established rule to break open all letters either going from or directed to any officer in the service of the Crown. It was with difficulty, I will assure you, that now I am able to transmit them, as my going from Accomac to this place [Norfolk] was opposed by upwards of 300 people of the county, who will not allow any vessel to come to this place, for fear of supplying the ships of war, and other troops, with provision; and I will assure you, that I am doubtful whether I may not be obliged to take a shelter on some of the ships, or at least on this side the bay, during the confused usurpation of power that an officer of the customs, if only he acts with spirit, or as his duty and oath bind him, that he will immediately fall under the lash of the damn'd committees, et cet., who on such occasions will show them as little mercy as they themselves may expect in the future world.

The Caroline Committee seized suspected letters sent from Port Royal,² and the Nansemond Committee, not even sparing women, summoned Betsey Hunter, on November 22, 1775, to answer the charge of having written letters to her brother in Norfolk informing him of military preparations at Suffolk and Smithfield. The woman denied that she had intended to give intelligence, but the committee decided otherwise and published her, along with Mary and

¹ *Virginia Gazette*, February 26, 1776.

² *Ibid.*, March 1, 1776.

Martha Wilkinson, who were privy to the letters, as "enemies to America." The Accomac Committee tried Captain Custis Kellam for using improper language concerning the people of Boston, but let him off on his apologizing.¹ So close was the scrutiny to which everybody was subjected and so injurious the suspicion of disaffection, that we find one Watkins, of Halifax, publishing a statement in the newspapers that he had gone on board Dunmore's ship solely on private business and had resisted the governor's efforts to seduce him from the patriot cause.² Such an incident was sufficiently absurd, but surely the climax of revolutionary effervescence was reached in the case of Richard Harrison, of Petersburg, who was haled before his committee for the high crime and misdemeanor of feasting bountifully on May 17, 1776, which had been proclaimed a solemn fast day. Harrison expressed his regret and declared he had forgotten it was a fast: he, and five others who had dined with him, were thereupon forgiven.³

Towards the end of 1775 and in the early months of 1776, the committees along the Chesapeake shore in the neighborhood of Hampton attempted to blockade Norfolk and adopted measures strangely like those used by local committees in the French Revolution. Persons going to and from Norfolk were required to show passes, failing which they were liable to be locked up in jail or sent to Williamsburg as suspected loyalists. Passports were required of all travelers through the tidewater region. "It is not now possible," wrote an Englishman from Portsmouth, on November 10, 1775, "for any of our Country

¹ *Virginia Gazette*, March 1, 1776.

² *Ibid.*, March 22, 1776.

³ *Ibid.*, June 7, 1776.

men to travel the country, without a pass from the Committees or Commanding officers, which none of them can procure." ¹ Another Tory tells of a trip he made to Hampton, where he was kept a prisoner by the local committee all night and examined in the morning.

The punishment of holding convicted loyalists up to public condemnation in the gazettes, at one time exceedingly efficient, was superseded in December, 1775, by an ordinance of convention "establishing a mode of punishment for the enemies of America in this colony." ² This ordinance provided that all white men who had been in arms against the colony and failed to surrender themselves in two months, or any who might thereafter assist the enemy, should be imprisoned at the discretion of the Committee of Safety, which was also empowered to seize their estates and apply the income to the public service. Slaves taken in arms against the colony or voluntarily attending the enemy were threatened with the dire punishment of being sold in the West Indies, or otherwise disposed of for the benefit of the colony. The Continental Association was continued in force and strengthened by a clause forfeiting imported goods and the ships employed. An admiralty court of three judges was established to carry these forfeitures into effect; and the Committee of Safety received directions to name five members of each local committee as commissioners to conduct jury trials of offenders against the Association. The Committee of Safety constituted the appellate court, and further was given the pardoning power.

In May, 1776, the convention increased the penalties

¹ *Miscellaneous Papers, 1775-1776.*

² *Henning's Statutes*, ix, 101.

for Toryism to forfeiture of estate and indefinite imprisonment, although a part of the sequestered property was to be applied to the support of the families of the owners.¹ The convention also adopted, on May 27, 1776, a test oath to be offered by local committees to all suspects. This oath bound the subscriber to aid the government of Virginia in the war, not to assist the enemy in any way, and to reveal conspiracies and plots. Refusal to take this oath was punished by seizure of arms and ammunition.² Following the establishment of the test, the Halifax Committee, on June 20, 1776, offered the oath to six men, who refused to take it and were waited on for their arms.³ A number of Fredericksburg merchants and other disaffected persons were ordered disarmed at the same time.⁴ In Northumberland several men rejected the oath and suffered disarmament,⁵ and in Pittsylvania seven or eight persons declined the test. The Caroline Committee offered the oath to James Miller and a dozen other suspects, who refused and were advertised as inimical.

There is no doubt [the committee said] but these monsters of ingratitude will be pleased with this notification of their attachment to the jurisdiction of Great Britain, serving to recommend them as fit instruments to enslave their American benefactors; and consequently proper objects of royal munificence; a large portion of which, perhaps, will fall to the man whose name stands foremost in this black list, as a reward for his disapprobation of and opposition to publick measures, sufficiently manifest, we think, in his refusing to qualify as a justice of the peace, in not complying with a requisition of Convention to contribute to the

¹ *Hening's Statutes*, ix, 130.

² *Journal of the May Convention of 1776*, 26.

³ *Virginia Gazette*, July 5, 1776.

⁴ *Ibid.*, August 23, 1776. ⁵ *Ibid.*, September 27, 1776.

purchase of arms and ammunition, and in not voting at elections of delegates and committees.¹

This bitter arraignment shows how the irritation of patriots against the disaffected was growing with the progress of the war. The man who heads the "black list" is denounced for refusing to accept office, failing to contribute to the fund for supplies, and absenting himself from elections. No overt act of any sort is charged against him. At Falmouth the King George Committee disarmed a few non-jurors.

So much for examples. The same process must have been repeated in nearly every trading community in Virginia, although the records have not come down to us. In each case a little group of men, suspected of lukewarmness or hostility towards the patriot cause, but usually not assertive in expressing opinions, was brought to the surface as "inimical" by the net of the test oath. Few open enemies of the Revolution remained in Virginia after the spring of 1776. Most of them had left in 1775, despairing of the royal cause or fearing to be involved in the struggle; the gazettes of that year are full of the "I-intend-for-England" of merchants appealing for the settlement of debts. Later, in 1776, when the patriot party passed from suppression of disaffection to refusal to tolerate dissent, the remainder of the trading class went into exile. A few who persisted in lingering were forcibly expelled.

The merchants and planters of British sympathies who left Virginia in 1775 and 1776 probably may be counted by hundreds. They were men of character and property, and in many instances of considerable education, and

¹ *Virginia Gazette*, December 6, 1776.

altogether formed the most energetic element in the colony. Their loss was irreparable; and it was many years before Virginia again possessed an active and enterprising commercial class. This was part of the price paid for the Revolution and was inevitable. In a revolutionary state no room existed for serious difference of political opinion; there was the alternative of submission or exile. The commercial Tories, scattered far and wide through an agrarian population, remained helpless in the face of the patriot majority; in Norfolk alone they dared strike a blow for the king. If there had been towns of any size in Virginia, with royal forces to occupy them, or if there had been at Norfolk a fifth part of the army Howe wasted in idleness at Boston in the winter of 1775-76, the history of the Revolution in Virginia and of the Revolution in general might have been different. But the home government, apparently interested only in the Boston situation, allowed its partisans in Virginia to be crushed or driven into exile without an effort to defend them, thus enabling the planters thoroughly to organize the colony for the Revolution and to render the most essential aid to the insurgent army in the North. Arnold, with a small command, did incalculable damage in Virginia in 1781; and Cornwallis, in his invasion, seriously, if ephemerally, affected the sentiment of eastern Virginia. Two or three regiments under a capable officer might have accomplished far more in the closing days of 1775, when the large latent opposition to the Revolution would have grown into a Tory party if the king had shown his ability to protect his own. In the absence of protection, the disaffected were forced either to leave Virginia or to become lukewarm revolutionists, giving a perfunctory sup-

port to the patriot cause. The patriot party, composed of the great majority of planters and the piedmont and western farmers and hunters and led by men trained in administration, allowed the loyalists no chance to concentrate at any point. The means employed to accomplish this end were the local committees, which exercised an almost despotic power from December, 1774, to the summer of 1776. They acted with an intelligence and thoroughness that modern political organization cannot surpass, and they succeeded so well in their task that surface observers are tempted to believe that in Virginia alone of the colonies British sentiment hardly existed. This is a mistake. The truth is that the committees did not allow British sentiment a chance to develop, and hardly even to exist.¹

It will be observed from the foregoing account that the Revolution was hardly a popular movement in its inception. The body of the people were not greatly aroused, when, in the last weeks of 1774, the committees began their work of enforcing the observance of the Continental Association. That boycott was distinctly the weapon of the planters, and the coöperation of the other classes of the community in the regulating proceedings of the committees was secondary.

The poor people of eastern Virginia — small farmers and others — began to take fire in the spring of 1775 as the result of Patrick Henry's activities. To them, unlike the planter class, the Revolution meant something more than resistance to England; it awakened feelings of antagonism to the order of society itself — feelings which have always

¹ One committee journal, that of Cumberland, is extant, though mutilated, in the Virginia State Library.

existed among men, but which largely remained inarticulate until the coming of the French philosophers of the eighteenth century. The poor in Virginia usually enjoyed a fair abundance of food, but they were housed in hovels and were utterly illiterate and to a large extent sunk in brutal dissipation. With resistance to the authority of England in progress and with the new French idea of equality in the air, it is not surprising that the poorer classes began to hope for a rise in their condition and a larger share in the government. Their participation in the Revolution marks the end of the first act in the great revolt, which had been distinguished by the labors of the committees directed wholly to the conservative end of abating British encroachments on colonial liberty.

CHAPTER V

CONVENTION AND COMMITTEE OF SAFETY

THE convention which met in July, 1775, found itself faced by the necessity of raising troops and preparing for war. By this time many companies of minute-men existed in Virginia, but the militia expected to serve only in emergencies. To meet the need of a permanent force, the convention passed an ordinance for raising two regiments of regulars and a number of companies of riflemen for border defense. There was no money in the Virginia treasury, however, and regular taxation was in abeyance during the Revolutionary crisis. An untrained assembly might have hesitated in finding ways and means, but this convention of experienced legislators went on to assert its sovereignty by laying a special levy. Carriages, tithables, land, ordinary licenses, marriage licenses, and legal writs were taxed to provide the money for arming, equipping, and paying the troops and paying the delegates in the Continental Congress. As some time must elapse before such taxes would come in, while money was immediately needed, the convention voted an issue of £350,000 of treasury notes. These were secured in the first place by the special taxes and finally by the whole property of the colony solemnly pledged by the convention.

The keynote of Revolutionary finance was thus struck at the beginning. The first paper money commanded a good exchange value for some time, but subsequent issues caused

rapid depreciation until the nadir was reached in 1782, when Virginia paper was worth about one to one thousand in specie. The English government, probably with wisdom, had opposed colonial paper money, and this issue of 1775 is one of the evidences of open revolution.

The convention met the need for an executive when, on August 17, 1775, it elected a Committee of Safety, endowed with considerable powers. The break with the colonial régime was now complete, for the royal governor, regarded up to this time as head of the state, gave way to another and frankly revolutionary executive. The convention itself was only the House of Burgesses acting in an unprecedented capacity, but the administrative junta called into being had no association with the past. It was born of a necessity completely beyond the scope of constitutional limitations.

The Committee of Safety, in its political complexion, represented the conservative wing of the patriot party as against the progressives led by Henry and Jefferson. As has been stated before, the use of party appellatives in describing the factions existing in Virginia before the rise of definite political organizations is not entirely accurate, but genuine divergencies require the employment of names. In the convention of July, 1775, conservatives and progressives were in strong conflict, — the one side pressing for sweeping measures and open war, the other endeavoring to stave off the inevitable struggle to the last moment. The revolutionary party, which was about equal in strength to its opponents, put forward Patrick Henry for colonel of the First Virginia Regiment, and, as such, ranking officer of the Virginia forces. Although Hugh Mercer, afterwards killed

at Princeton, led him on the first ballot, Henry's friends managed to elect him; but his antagonists, foiled in their effort to prevent his election, consistently hampered his action through the administrative power of the Committee of Safety.

This body without exception was composed of men of substance and position. Six members came from the tide-water counties, three from the south side, one from the piedmont, and one from the west. A glance thus shows that the preponderant eastern element secured the success of its policies by electing a majority of the committee from its own ranks. Seven of the eleven members, Pendleton, Bland, John Page, Paul Carrington, Dudley Digges, Carter Braxton, and John Tabb, may be classed as conservatives, leaving as progressive representatives George Mason, Thomas Ludwell Lee, William Cabell, and James Mercer. Mason, probably the foremost member in point of ability, seldom attended meetings and the direction of affairs fell into the hands of Edmund Pendleton, the conservative leader. Bland, who might have disputed the primacy with him, was old and in declining health. Pendleton, as both president of the convention and chairman of the Committee of Safety, occupied a unique position. With Jefferson, Henry, and Richard Henry Lee out of Virginia politics for the time being, he was the most influential man in the government. Because of his ascendancy, the Williamsburg administration held off from war long after hostilities had begun elsewhere; they still hoped against hope for a reconciliation with England. Such an event would have been welcome to Pendleton provided it could be had on terms honorable to America. As this could not

be, he bravely played his part in the Revolution. Pendleton is a figure in many ways resembling Disraeli. Like Disraeli he had to make his way from obscure beginnings; like Disraeli he became the ardent defender of the ruling class which accepted him. He was of fine presence and polished manners, an able lawyer, an honorable and capable public man. He believed in government by gentlemen and had no sympathy for the great democratic movement which Henry had first led and which Jefferson was later to guide to a mighty destiny. He spent much of his career in resisting attacks on the crumbling social order of the colonial age and died at the threshold of the nineteenth century just as he was about to deliver a final blow in behalf of that most conservative of institutions, the Anglican Church.

The convention entrusted the Committee of Safety with the powers needed by a vigorous executive in time of war. It was given control of troops in the field and the militia and had authority to secure arms and ammunition wherever they could be found. It might enter into negotiations with other colonies for military support and was to carry on a correspondence with the various county committees. This last-named duty developed into a general supervision of these committees. The convention imposed on loyalists the penalties of imprisonment and seizure of estates at the discretion of the Committee of Safety. Service in the militia was required of all able-bodied men of military age except Britons born, who might remain neutral.

Owing to the influence of Edmund Pendleton, the Committee of Safety used its powers with extreme caution in the summer of 1775. To him Dunmore was still the lawful governor, to be respected as such. Besides taking no steps

against Dunmore, the committee largely left the loyalists alone in September, October, and November, 1775. It found abundant employment in organizing, equipping, and feeding the troops raised by the convention and in getting into the field a part of the militia.

Unquestionably the Williamsburg junta displayed energy and intelligence, but it also allowed time for Dunmore to get reinforcements and recruits and begin to harass the Chesapeake shores. The committee was forced at length by Dunmore's depredations on property and arrests of patriots to make a demonstration; and, on October 24, 1775, decided to send troops to Norfolk. Dunmore meantime worked energetically to raise a force. He had ample leisure to do this, for so slowly did the colonial troops move that they reached the vicinity of Norfolk only about December 1, 1775; and if the governor had not taken the initiative by attacking the militia at Kempsville and proclaiming freedom to slaves, it is probable that hostilities might have been postponed for a considerably longer period. In fact the Committee of Safety, zealous as it was in purely administrative work, preferred to leave large questions of policy to the convention; it probably felt that it possessed anomalous powers which should not be asserted too vigorously.

When the convention met, on December 1, 1775, a whole host of complaints and appeals awaited it; a widespread feeling existed that the convention was the sole authority able to deal with the novel and confusing circumstances attending the overthrow of the old régime and the beginning of war. Thus the Accomac Committee on November 30 reported that the county delegates could not

attend the convention for fear of being taken by English ships cruising in Chesapeake Bay and complained of the exposed situation of the Eastern Shore and the general disinclination of the people for militia service: it asked for a detachment of regulars to take the place of militia for guard duty.¹ The Elizabeth City patriots stated, on December 2, that some of the people of that county had boarded a schooner and brought supplies ashore from her, and that another vessel, laden with provisions, might have been taken if they had had "powder and orders." They accordingly requested directions from the convention or Committee of Safety as to future action in regard to seizing British ships.² Warwick complained that it could raise only one hundred militia, a force too small to protect the county from the enemy, who had already begun to ravage it: the committee asked for an additional force of 125 men.³ War had evidently begun and war measures were necessary, among others the adoption of a definite policy towards the Tories. County committees had mercilessly suppressed these unfortunates by such means as isolated communities are able to employ, but the work of repression could no longer be left to local bodies. Still, the Committee of Safety had refrained, save in a few aggravated cases, from using the license granted to it of imprisoning loyalists and taking possession of their estates. Under these circumstances action by the convention was necessary and unavoidable. Citations of names go to prove that in spite of the extreme disadvantages they were under there

¹ Petitions to the Convention and Committee of Safety, March to December, 1775.

² Legislative Petitions. Elizabeth City (A5238).

³ *Ibid.* Warwick.

were a good many loyalists in Virginia, including men of position and influence: if they had been shown toleration their numbers would have increased with every reverse of the American arms until a genuine party might have come into existence.

The chief men of Tory inclinations in Virginia were John Randolph, attorney-general of the colony and father of Edmund Randolph, Secretary of State in Washington's Cabinet, who resigned his office and went to England; William Byrd, of Westover, perhaps the first gentleman of Virginia, colonel of a regiment in the French-and-Indian War and member of the council, who was approached in regard to accepting a command in the Revolutionary army, but refused to entertain the offer and remained quietly at his fine estate of "Westover" until his death in 1777; Ralph Wormeley, member of the council and of one of the most prominent colonial families; Richard Corbin, receiver-general of Virginia, and his sons, Francis and Thomas; Reverend John Agnew, of Suffolk, who became chaplain of the Queen's Rangers and finally settled in New Brunswick; Reverend Jonathan Boucher, rector of Hanover and later of St. Mary's Parish; Bryan Fairfax, of Alexandria, who attended and withdrew from the Fairfax meeting of July 18, 1774, where a county committee was appointed and strong resolutions were adopted; Lord Thomas Fairfax, the friend of Washington and one of the very few noblemen residing in America, the owner of a vast estate in western Virginia on which he continued to live undisturbed all through the Revolution; Reverend John Camm, president of William and Mary College and commissary, who committed no overt act and went unmolested; Andrew Sprowle, of Nor-

folk, the leading merchant in Virginia, who died in exile in 1776; Archibald Ritchie, of Middlesex, father of the noted editor; Philip Rootes, of "Rosewall"; Jacob Ellegood, held as a prisoner and repeatedly asked for in exchange by the British; Matthew Phripp, of Norfolk, merchant; John Tayloe Corbin, a large landowner's son; and John Grymes, another prominent planter. Many men of less importance shared their opinions and usually suffered a harder fate.

Not only were the loyalists a menace by reason of their numbers and prominence, but Dunmore, through his depredations and finally by his proclamation of martial law, forced the provincial government to proceed vigorously against them as his adherents. After considering Dunmore's proclamation, the convention, on December 13, 1775, issued a counter-declaration framed in the style of Jeffersonian rhetoric. Dunmore's tyranny is arraigned and Virginians are exhorted to show zeal in resisting it. The people of Norfolk receive warning not to be led by the governor into opposing the colony, although the convention admits the practical difficulty of refusing his demands. But neutrality is the least that can be accepted. "If any of our people, in violation of their faith plighted to this colony, and the duty they owe to society, shall be found in arms, or continue to give assistance to our enemies, we shall think ourselves justified, by the necessity we are under, of executing upon them the law of retaliation."¹ On the next day the convention directed Woodford to send to Williamsburg Tories taken in arms against the colony, and, pending orders from the convention or Committee of Safety, to detain other persons appearing unfriendly. The

¹ *Journal of the Convention of December, 1775, 64.*

convention further proclaimed the death penalty for slaves engaged in conspiracy or rebellion, and other punishments for slaves seduced into joining Dunmore by his invitation, but offered pardon to those who had already taken arms and were willing to surrender themselves.¹ It also entered on the task of considering the cases of individual loyalists. There was actual treason as well as disaffection. Depositions made concerning John Dew, a shipmaster, recently arrested in the Rappahannock River, showed that he had attempted to corrupt a patriot force at Fredericksburg by picturing the superior comforts enjoyed by troops in the British service. "The King," he said, "found his soldiers four new shirts & a good suit of cloaths, paid for their washing, & 3/6 shillings per week day, free Quarters & advised them to goe to the Governor." ²

On December 16, 1775, the convention reappointed the Committee of Safety, with two changes, Joseph Jones and Thomas Walker replacing George Mason and Carter Braxton. Though the vote for him fell off greatly, Edmund Pendleton remained the head of the committee. At the same time the convention heard Dr. Archibald Campbell, of Norfolk, who complained that he had been charged with aiding Dunmore against the colony, but had done nothing except under compulsion. The convention referred his petition to a special committee and ordered him back to his room in Williamsburg under guard. A few days later Woodford sent to the convention three other suspected loyalists, Matthew Phripp, Edward Hack Moseley,

¹ *Journal of the Convention of December, 1775*, 66.

² Petitions to the Convention and Committee of Safety, March to December, 1775.

and the latter's son: they were ordered into confinement waiting examination. The Caroline Committee reported that it had seized the effects of another Norfolk Tory, Thomas Hepburn, then in arms against the colony. Yet, in spite of the widespread disaffection in the Norfolk district and the number of Tories sent to Williamsburg for trial, the convention acted with commendable moderation. While county committees crushed British sympathizers without mercy, the convention, like the Committee of Safety, proceeded cautiously in inflicting severe punishments. As has been stated, the greater number of irreconcilable royalists left Virginia before the end of 1775, but a part of this non-native mercantile class was willing neither to submit quietly to the Revolution nor to go into exile; they were hostile to the patriot party and openly in sympathy with Dunmore. Some of these men had gone further at Norfolk in the king's behalf than could be easily explained on the ground of constraint; and the convention, in view of this fact, withdrew the consent granted by the July Convention for British-born residents to remain neutral. It charged them with violating the Continental Association, giving intelligence to the enemy and furnishing him with provisions, propagating falsehoods injurious to the patriot cause, inciting slaves to rebellion and leading them in arms against the colony. No citizens were any longer to be exempt from the burdens and dangers of defending the country. Able-bodied men declining so necessary a duty were to be permitted (at the pleasure of the Committee of Safety) to leave:¹ those who had taken arms against the American cause, or otherwise compromised themselves,

¹ *Journal of the Convention of December, 1775, 70.*

were denied this privilege. The colony thus laid down the principle that all citizens must range themselves frankly on its side or depart; there was no longer room in Virginia for neutrals. A few individuals of influence, like William Byrd, continued to live unmolested while remaining quiet, but the measure resulted in the expulsion of most of the British merchants and clerks who still lingered.

A special committee investigated the loyalists sent to Williamsburg by Woodford. Archibald Campbell, according to the report, had been opposed to violence in resisting England because he thought that "a strict adherence to the commercial opposition would produce a redress of grievances." His chief offense was in taking Dunmore's oath: he had sent his family to Bermuda, whither he intended to follow shortly. John Willoughby, former county lieutenant of Norfolk and chairman of the local committee, had also been forced to take Dunmore's oath, and had ordered out the Norfolk militia in Dunmore's interest. As for Cary Mitchell,¹ Woodford had been notified to send on the evidence, but had failed to do so. The committee found that "Archibald Campbell does not appear to have been inimical to the rights and liberties of America," that John Willoughby had acted under compulsion, and that Cary Mitchell did not appear to be unfriendly. The three men were then discharged on parole not to give assistance or intelligence to the enemy.² The two Moseleys had likewise taken the British oath, but had not aided Dunmore actively, and were discharged. Matthew Phripp was reported to have played an important part in the patriot councils at Norfolk before Dunmore's occupation of that place, at which

¹ *Journal of the Convention of December, 1775*, 75.

² *Ibid.*, 82.

time he also had been compelled to subscribe to the oath. "Falling into the power of Lord Dunmore," the report stated, "he had only the alternative of submitting, or exposing his life and fortune to his lordship's resentment; in his extremity he yielded, and took the oath; but as the said Matthew Phripp soon after manifested his willingness to support the common cause, we think, upon the whole, he ought to be restored to the confidence of his countrymen." ¹

The convention, in dealing with these first cases of loyalists, showed mildness, for the war had not as yet progressed far enough to produce much bitterness and, furthermore, the Norfolk patriots had been put in a difficult position by Dunmore. This moderation was so marked that at the beginning of 1776 several Tories who had gone on board the fleet in Norfolk Harbor with their families ventured to ask Woodford and Howe for permission to return home. The commanders replied that they would receive and protect the women and children and hold the men as prisoners. Their action was approved. ²

At the first of the year the line had not yet been strictly drawn between enemies and friends and the colony was not exactly in a state of war. Practically speaking, war existed, but not legally. Commerce still continued under the restrictions of the Continental Association, which was an embargo and not a war measure; and the convention was somewhat at a loss as to the proper procedure in the case of the vessels that county committees and militia were now seizing in Chesapeake Bay. Open war had put an end to any usefulness the Association might have had as a pro-

¹ *Journal of the Convention of December, 1775*, 85.

² *Ibid.*, 80.

test, or means of gaining concessions, but it remained in force because the Revolution was a civil war and not an international conflict begun under proper forms — commerce had not been placed on a war footing. Necessity, however, was righting this artificiality, as is shown in the case of a shipmaster, Stephen Pierce, held for carrying salt from Antigua to Maryland in violation of the Association. He was allowed to proceed on his way because Maryland probably needed the salt.¹

Captured ships and cargoes were another war feature the convention was forced to deal with. Several vessels had been seized in Hampton Roads on the charge of violating the Association, or being the property of enemies of America. The committee recommended the forfeiture of the sloop *Agatha* freighted with a quantity of rum, — not because the rum had been improperly imported, but on account of the hostile conduct of the owners. Again, the sloop *Swallow*, bringing in salt, had not violated the Association, but the attitude of Hector McAllister,² the owner, towards the colony required investigation. The brig *Corlet*, engaged in importing contrary to the Association, should be sold at auction. The convention laid this report on the table and ordered that the cargo of the *Agatha*, except the rum, be delivered to the owners.

Captain Richard Barron, in April, 1776, seized two vessels at Fredericksburg and one at Port Royal under the resolutions of Congress making all British property on the water liable to capture. Two of the ships belonged to British firms having agents on the Rappahannock; half of

¹ *Journal of the Convention of December, 1775, 84.*

² Executive communications, 1776 (Virginia State Library).

the third was claimed by an agent as his personal property and so not subject to confiscation. This awkward question of divided ownership — which meant that the government could only claim a part of a property — repeatedly came up in connection with estates belonging to business firms composed both of citizens and alien enemies. Seizures under Congressional recommendation, which were limited at first to effects captured at sea, later included every form of property.

Before adjournment the convention's attitude towards loyalists changed greatly. When it met the body had no very definite mode of punishment in mind; when it adjourned it had passed severely repressive measures. This transformation resulted largely from the obnoxious activity of the loyalists around Norfolk during their brief season of ascendancy. Norfolk and Princess Anne patriots, in their bitterness, requested that the British sympathizers of the neighborhood be moved to a distant part of the colony to prevent further mischief. They declared that the Tories had raided their plantations, robbed them of plate, money, and other valuables, stripped their wives and daughters almost to nakedness, burned their houses, and ended by dragging some of them into captivity. These various alleged misdoings led to the passage of an ordinance "for establishing a mode of punishment for the enemies to America in this colony."¹ All white men who had been in arms against the colony and who should refuse to surrender themselves within two months, or who might thereafter aid the enemy, were to be imprisoned at the discre-

¹ Letters to the Committee of Safety, 1776 (Virginia State Library). Henning, ix, 101.

tion of the Committee of Safety, which should also seize their estates and apply the revenues to the use of the colony. The committee, now wielding the power of imprisoning and pardoning Tories, became an extra-judicial court. This ordinance, however, did not prove sufficiently definite; it left the treatment of loyalists still a matter rather of policy than of law. The May, 1776, Convention accordingly increased the penalties for disaffection to forfeiture of estates and imprisonment, although such part of the property of imprisoned loyalists as was judged proper should be applied to the support of their families.¹ Commissioners appointed by the county courts were to administer the forfeited estates for the benefit of the public. To settle the question of allegiance, the convention adopted a test oath. The arms and ammunition of all persons refusing it were to be taken for the state.² A good many non-jurors in various parts of the colony were disarmed under this provision, yet not without compensation, at least ordinarily. Thus Philip Rootes was allowed six pounds for a rifle seized at his house.³

Many Norfolk cases came before the convention in the last days of the session. Alexander Gordon, who had borne arms against the colony and had been active in Dunmore's behalf; Joshua Whitehurst, who had attempted to raise recruits for him; Dr. Thomas Hall, ensign in Dunmore's army; a dozen Tories who had fought at Great Bridge; the commander of one of Dunmore's tenders; nine others who had been pressed into military service by the British were held as prisoners. Five men who had "in some measure

¹ Hening, ix, 130.

² *Journal of the Convention of May, 1776*, 26.

³ *Calendar of Virginia State Papers*, viii, 213.

aided Lord Dunmore," but had not taken arms or shown especial zeal, were released on parole to do nothing unfriendly in the future.¹ Forty negroes, most of them captured at Great Bridge, were condemned to sale in the West Indies or restored to owners.²

The convention also examined the man who — inexplicably enough — seems to have been the most dreaded Tory produced by Virginia in the Revolution. John Goodrich, a Nansemond planter and shipowner, had rendered the colony conspicuous service in the early stages of the struggle by bringing in from the West Indies a quantity of that sorely-needed article, powder.³ This performance drew down Dunmore's resentment and he was arrested and put on a sort of parole, being required to visit the governor's ship once every ten days. Apparently Goodrich was a subject of intimidation — an art in which Dunmore excelled. At all events, after a little while he began to act definitely on the British side. In command of an armed sloop he captured a ship in Ocracoke Inlet, North Carolina, and is said to have taken another in Chesapeake Bay. His career as a privateer was cut short when his sloop was boarded in Ocracoke Inlet by North Carolina patriots, who sent him a prisoner to Williamsburg. The government there signified its belief that he was a dangerous character by putting him in close confinement. After a careful examination the convention found him guilty of bearing arms against the colony and aiding the enemy; he was ordered to be sent to the interior and his estate was seized and administered by commissioners.

¹ *Journal of the Convention of May, 1776*, 97. ² *Ibid.*, 100.

³ *Calendar of Virginia State Papers*, VIII, 144, 151.

Other charges against loyalists came to the convention from zealous county committees. The Dinwiddie Committee, informing the convention that Thomas Irving, a deputy postmaster in that county, was also agent for Neil Jameson, a Tory, asked for advice in regard to removing him. "The committee would not chuse to be officious in acting without authority from the Convention — but are clearly of opinion it is highly improper and may be of great prejudice to suffer the said Irving to continue post-master — which may give him an opportunity of opening letters — of conveying intelligence of the most dangerous nature to the welfare of this colony, . . . yet we are anxious not to exceed the line of our duty and therefore beg, Sir, you would be pleased to point it out to us." ¹ This letter is a fair sample of the spirit of obedience and desire for guidance inspiring the local committees in their dealings with the convention. Recommendations and orders from the latter body usually received prompt obedience, even when contrary to the wishes of committees. Thus, Wilson Curle, chairman of the Elizabeth City Committee, reported to Pendleton that that body had delivered a ship it had seized to the owner according to the orders of the convention. The Northampton Committee, which had sent several loyalist prisoners to Williamsburg, was highly gratified because the convention approved its conduct towards "those deluded people." ² In general the relations of the convention and Committee of Safety with the county committees were strikingly harmonious.

In the interval between the March and May Conventions of 1776, the Committee of Safety once more became

¹ Executive communications, 1776.

² *Ibid.*

the central power in the colony. Now that the die was cast, and open war was being waged in Virginia, and the convention itself had decided the treatment of loyalists, the junta acted more vigorously and definitely than in its earlier career. The committee's former wide discretionary powers were outlined in positive ordinances. Besides, the conservatives in the early months of 1776 had begun to lose hope of a reconciliation with England and anticipated an independent government.

Norfolk continued to be the chief internal problem of the Revolutionary administration. The destruction of this center of disaffection in January, 1776, somewhat simplified the question, but the country people of the region had been considerably tainted by Tory associations and Dunmore still found sympathizers and intelligence-givers ready to serve him. All this section lay open to raids by the British naval force, which continued to depredate with increasing severity. So constant were these raids and of such benefit to the raiders that the Committee of Safety as early as March, 1776, pondered the question of advising the people of the lower country to remove into the interior and leave their lands uncultivated, in order to cut off supplies from the British. This policy naturally failed to meet the approval of the population affected by the proposal, which urged, with obvious reason, that the removal of more than five thousand people in spring weather over bad roads would involve much suffering.¹

The committee hesitated to go so far as to enforce a general depopulation of the country, but, nevertheless, on April 10, 1776, ordered all persons in Norfolk and Prin-

¹ Letters to the Committee of Safety, 1776.

cess Anne Counties, who had joined Dunmore and taken his oath, to move into the interior at least thirty miles from the enemy. To insure the enforcement of this order, the slaves of the evicted loyalists were to be carried inland and returned to their owners only when these had settled themselves as directed. A thousand pounds was voted for the relief of poor people unable to bear the expense of moving. The committee had been induced to take this action by an exaggerated letter from General Charles Lee,¹ then commanding at Norfolk, as well as by the general belief that Norfolk Tories were engaged in supplying Dunmore with provisions and information.² The Princess Anne Committee, in its perturbation over this sweeping order of banishment, declared to the Committee of Safety that, while the Norfolk people were much given to communicating with the enemy, the Princess Anne population was free from that iniquity. "As to the inimical dispositions of many of the Inhabitants of this County," the committee pathetically continued, "we beg leave to assure you that we, who have lived and been bred up with them, and have heard their Sentiments on this unhappy Dispute, and have been Witnesses of their conduct, think there are as few in this County as in any part of the Colony, and are as willing to join in any Measure for the advancement of the American cause; but such is our unhappy Fate that from the Manceuvres of Lord Dunmore in this County when it was almost in a defenceless state, that we have been thought in general Inimical and has been a great means of our being grossly misrepresented."³ The

¹ Given in full above. ² Letters to the Committee of Safety, 1776.

³ *Calendar of Virginia State Papers*, VIII, 166.

committee asked that nothing more be done than to put the live stock out of Dunmore's way.¹ The government agreed to allow friends and neutrals to remain on their estates on this condition: the inimical were to be forced to remove with their families and effects. The Norfolk people had also protested against the removal order; and since Dunmore had now left that vicinity the convention rescinded the resolution except in so far as it applied to the inimical.

As above stated, the Committee of Safety succeeded to the convention's function of court of appeals from the counties. Appellants felt that this tribunal would treat them with less prejudice than local committees, and, in fact, the committee acted with great lenity in these appeals. The cases of Joshua Whitehurst and Walter Hatton, of Accomac, have been mentioned. In the case of Archibald Ritchie,² accused by the Essex Committee of violating the Association by importing, the committee recommended the prosecutors to pass over the offense with a warning. The imported goods were not condemned, because brought in before the passage of the confiscatory ordinance. The convention, however, in the spring meeting condemned goods seized before the passage of the ordinance, and left it to the option of local committees to confiscate goods or go on publishing offenders as before.

The committee was as anxious to avoid usurping the power of the local organizations as the latter were to refer cases to it for decision. When Thomas Mann Randolph and Thomas Underwood demanded to know whether the

¹ Executive communications, 1776.

² *Calendar of Virginia State Papers*, VIII, 164.

Goochland Committee had authority to investigate charges against Randolph, mentioned in a summons to Underwood, the committee ruled that it had no power to interfere with the Goochland authorities in an examination, but expressed a wish that they would not act on mere slanders and would confine themselves to actual Toryism.¹ It frequently sent offenders back to the local courts for trial rather than seem to stretch its authority. The committee, about the first of March, 1776, adopted the policy of confining loyalists on parole within certain limits. They were perhaps led to take this action by appeals like that of Jacob Ellegood, the noted Tory, who had been thrown into jail and petitioned to be allowed to return to his plantation and live there quietly. The committee refused his request, but ordered his removal to Page Warehouse, Hanover, to remain on parole not to go out of the town limits or hold any correspondence on political subjects.² Ellegood's conduct proved so obnoxious to the patriotic people of Hanover that the committee, on June 1, 1776, transferred him to Winchester.³ Later, after a tedious detention, he was exchanged as a prisoner of war. Mary Ellegood, his wife, appealed to the convention for relief in June, 1776, complaining that she and her three children had been deprived of the necessities of life since the seizure of her husband's estate. The committee, indeed, used loyalist property for the public service before the policy of actual confiscation began. Slaves of loyalists were frequently put to work for the government, as in the case of six of them confined in the public jail, who were

¹ *Calendar of Virginia State Papers*, VIII, 124.

² *Ibid.*, VIII, 103.

³ *Ibid.*, VIII, 183.

used around the prison. The horses of George Logan, who had joined Dunmore, were sold and his slaves hired out for the benefit of the treasury.¹

Ralph Wormeley, Jr., one of the few men of high standing in the planter class openly identified with the British cause, came before the Committee of Safety, on April 22, 1776.² The occasion of his summons was an indiscreet letter written to John Grymes, which happened to fall into the hands of the patriots and was forwarded to Williamsburg. The committee decided that nothing in Wormeley's conduct, or even in the letter, came within the scope of the ordinance establishing penalties for disaffection, but that the letter clearly proved an inimical disposition and a readiness to join the enemy on occasion. Wormeley was accordingly ordered to be discharged on giving bond for £10,000, not to correspond with the British or aid them, or to leave the colony without the consent of the government. The unfortunate correspondent had graphically described the difficulties under which Tories labored in tidewater Virginia in 1776, pressed as they were on one side by Dunmore and on the other by the Williamsburg government, sympathizing with the British but unable to aid them. Wormeley protested in utter irritation against Dunmore's demand for an unequivocal stand on his side, when such a course could only bring ruin to the impotent loyalist without benefiting the governor. But the ruin of his friends meant nothing to Dunmore, who was catching at every straw in the vain hope of securing some elements of strength.

Wormeley's complaint was as follows: —

¹ *Calendar of Virginia State Papers*, VIII, 185.

² *Ibid.*, VIII, 163.

Ralph Wormeley, jun. to John Grymes, Esq.

When you and John Nelson returned from Norfolk, you informed me that Lord Dunmore, wished or expected or thought it my duty, that I should immediately in person repair to his Lordship; that some such ostensible mark of my attachment to government, and Loyalty to my King was looked for from me, and that notwithstanding my unequivocal steady and invariable conduct, if I still continue at home, I may be exposed to the indiscriminating ravages of war, without any Chance of reparation. Whether this opinion is founded on the last proclamation of the King's on the late advice of the minister or from his Lordship's conjecture I do not know: as to the proclamation and the late advices from the Minister, I have an easy answer.

1st. I have never seen the proclamation; never heard it read or repeated, it cannot then be expected of me to pay respect to any instrument of that sort, whose contents I can have no cognizance of: before they are submitted to my senses. 2nd. as to the advice of the Minister which may lead his Lordship to conclude it to be the duty of every man, now, when the friends of government are in such a state of impotency, or rather are under such compleat dominion, to repair to his Lordship without probability of advancing any practical scheme of utility, of concerting any effectual plan of operations, and without any regard to circumstances, I say Sir, such advices are repugnant to the words and meaning of the King. In the true Knowledge of our present situation, his Majesty thus expresses himself, "and although many of those unhappy people may still retain their loyalty and may be too wise not to see the fatal consequences of this usurpation and wish to resist, yet the torrent of violence has been strong enough to compel their acquiescence till a sufficient force shall appear to support them." A few observations in the above quoted passage will prove the repugnancy, "unhappy people" in what? being overpowered by these usurpers, so overpowered that they cannot even hope they can only wish to resist it: this being the case, what are these unhappy people to do? What does his Majesty expect? not their fruitless vain endeavors which prejudice every cause: he knows that the torrent of violence is strong

enough to retain them in their compulsive acquiescence "till a sufficient force shall appear to support them." He expects then they will wait the event; they will have, they have a right to protection. Every effort and endeavor now on their part would only issue in ruin to themselves and ruin to their cause. No man bears the accursed Tyranny with more impatient mortification than I do, and if there was a corner on the face of the earth, that I could support myself in and enjoy that freedom that I am now violently deprived of, I would for the gratification of my happiness fly to it. I have too much feeling not to be exquisitely sensible of my slavish condition. . . . But after all what beneficial consequences could my personal attendance operate in favor of that cause, whose success I have at heart? My example is not efficacious enough to influence others to follow it. What exertions of mine could now avail? and are not ineffectual exertions Capitally erroneous in policy? would not, or might not the departure of a person of my insignificance quicken the jealousy of the present rulers, give fresh vigor to prosecutions, and make them lash our few party friends, not with the rod of iron, which we have experienced, severe enough for the most criminal atrocity, but with a red hot one, fresh from the infernal forge of Tyranny.

If tho' the Governor should think my presence necessary and that I can in any degree be assistant to his Lordship, government or my country, will give me an official Summons, and afford me proper facilities to reach him, I will at the hazard of that precarious negative quiet that is now indulged to me, I will to the prejudice of my health, which you know is at present interrupted by a most inveterate disorder . . . at the risk of my life, of everything, obey it.¹

Wormeley did not give the required bond and remained in custody. It is probable that his political separation from almost the entire planter class oppressed him with a sense of isolation and finally weakened his fervent devotion to

¹ Executive communications, 1776.

the royal side. At any rate, on May 11, 1776, he addressed the convention and, expressing regret for his unfortunate letter, declared his attachment for the American cause. The only point in which he differed from public opinion, he asserted, was in the means to be adopted for obtaining relief from Parliamentary taxation. He had never opposed public measures or violated the Association and the ordinances of the convention. The committee that examined his case reported that the letter showed an unfriendly and dangerous spirit and recommended his confinement to his father's estate in Frederick and Berkeley under bond of £10,000 not to leave without permission. Wormeley then gave bond and entered upon exile.¹

As the year 1776 advanced, Virginia began to settle down into a more regular status: the Revolution, in its primary and immediate character, was over. An unfailing sign of this, county committees began to be superseded as tribunals by courts of inquiry appointed from members of committees or militia officers and juries were summoned as in ordinary courts of law. The large, unwieldy committees gave place to these small commissions. The courts of inquiry were later succeeded, upon the establishment of a permanent government, by the old-style county-court system. The courts of inquiry conducted themselves much as the committees had done and retained the same connection with the Committee of Safety, sending offenders on to Williamsburg as before. The Gloucester commissioners' court, on April 4, 1776, tried John Wilkie on the charge of communicating with the enemy. The jury brought in a verdict of "guilty of giving intelligence to

¹ *Journal of the Convention of May, 1776, 15.*

our Enemies and going on board the man of war intentionally," and sent Wilkie to the Committee of Safety.¹ The committee ordered an inventory to be taken of his estate and appointed Sir John Peyton commissioner to sell it.² The Norfolk court of inquiry, on April 30, 1776, examined Thomas Talbott charged with being inimical. As three witnesses testified in his behalf, he was discharged. But at the same session the court ironed John Scott, convicted of supplying the enemy with provisions, and sent William Creamer to Williamsburg for the same offense. Another court of inquiry consisting of four officers, held in May, 1776, considered cases of furnishing supplies to the enemy, desertion, and drunkenness;³ and also tried the loyalist John Willoughby, ordered to remove inland from the coast but disobedient. The chief evidence against Willoughby was a statement he had made that the proceedings of the patriot party would force the people to become Tories or form a third party. As Willoughby pleaded drunkenness for an excuse he was treated leniently, intoxication being regarded by the Fathers as a palliating circumstance in almost every crime from failure to attend church to treason. The case of George Oldener was more serious. Oldener, among other things, had aided one of the witnesses against him under the impression that he was a deserter from the American army and had called a prisoner held by Dunmore a "damned rebel." He was judged to be unfriendly to the patriot cause, but as he had committed no overt act to bring him within the ordinance

¹ Letters to the Committee of Safety, 1776.

² *Journal of the Convention of May, 1776*, 8.

³ Letters to the Committee of Safety, 1776.

prescribing imprisonment for "enemies of America" he was sent into exile in the interior.

Appeals came to the Committee of Safety from the new courts of inquiry just as from the former committees. The Committee of Safety, on June 8, 1776, tried a case appealed from Middlesex, that of Charles Neilson, who was ordered to remain within the limits of Fauquier County and to be kept in custody until he gave a bond of £100 not to leave the county.¹ He was released from confinement on giving bond and went away to Fauquier, while five commissioners took possession of his Middlesex estate and his other property in Gloucester.²

The Committee of Safety, on June 21, 1776, sat on John Goodrich, Jr., son of the noted Goodrich, who had created such a stir in the colony. John Goodrich, the younger, with his brother Bartlett, in assisting his father to bring in the powder, had imported forbidden goods and falsified the invoices, changing the nationality of articles from Scotch and Irish to Dutch, — a not infrequent transformation in those days of the Continental Association. They had ingeniously pleaded in defense that they were forced to take other British goods in order to get the powder, but the convention confiscated the goods and branded the importers as inimical. John Goodrich, Jr., further found himself in the custody of William Harwood, bound not to correspond with Dunmore or go more than three miles from Harwood's place without permission. When no witnesses appeared against him at the date set for his regular trial before the Committee of Safety, he was discharged on giving bond of £2000 for good behavior, which William

¹ *Calendar of Virginia State Papers*, VIII, 194.

² *Ibid.*, VIII, 207.

Harwood furnished. Goodrich refused, however, to take the oath prescribed for suspects and suffered disarming — proof positive of a hostile spirit. Both he and Bartlett Goodrich received rather lenient treatment, which the authorities no doubt often regretted later. For the Goodrich sons became a thorn in the side of Virginia before the war ended. Managing to get away to New York, they fitted out privateers and waged warfare on Virginia commerce with energy and luck; they dashed in through the Capes and cut out ships time and again. Of all the British privateers swarming in these waters they were the most noted.

The Revolutionary Convention met for the last session on May 6, 1776. Edmund Pendleton, chairman of the Committee of Safety and president of the December, 1775, Convention, was again elected president. Pendleton, on assuming the gavel, made a brief speech in which he called the attention of the convention to the necessities of the situation: he reminded the delegates that the courts had been closed for two years and that many criminals were waiting trial, and that the ordinance "prescribing a mode of punishment for the enemies of America" required amendment.

The speech was the keynote of a sterner policy towards loyalists. Two days later Pendleton laid before the convention a letter from John Tayloe Corbin to the Tory, Charles Neilson, "containing sentiments inimical to America," together with the proceedings of the King and Queen Committee upon the same.¹ Corbin was committed to custody and his letter referred to a committee, which

¹ Executive communications, 1776.

reported that it showed "a disposition unfriendly and dangerous to the rights of his country" and recommended his confinement on parole. Corbin had quite a tale of hardship to tell in his behalf. He stated that he had written the letter in October, 1775, to Neilson, who was about to go to Norfolk with a passport from the Middlesex Committee, but that he had not violated the colonial regulations in any way. In spite of this, the commander of the local minute-men had arrested him, taken him from his family, and, after keeping him a prisoner for four days, finally brought him before the county committee, which had discharged him as not coming within its jurisdiction. Anxious for a vindication, he had come to Williamsburg with the suspected letter, when, on his arrival, he had been again arrested under a military warrant and confined in the common guardhouse. No open act was charged against Corbin, but nevertheless the convention demanded a bond of £10,000 and paroled him to stay in Caroline County. His case, like Wormeley's, attracted great attention, as he was one of the wealthiest and most prominent men in the colony and one of the few rash enough to protest, even in a private letter, against the Revolution.

In spite of such occasional severity, the convention conducted its investigations with strict justice and dismissed a number of suspects.¹ The public temper, however, was gradually hardening under the stress of war. Not only was disaffection becoming a more serious offense as the gap between the colonies and England widened, but property rights were less carefully guarded. The convention directed the Caroline and Spotsylvania Committees to

¹ *Journal of the Convention of May, 1776, 27, 31.*

determine the ownership of four vessels seized as British property by the colonial naval commander in the Rappahannock. Significantly enough, the convention placed the burden of proving ownership on the claimants. It was not now for the colony to prove that suspected ships were British property, but for the owners to prove that they were not. The convention continued the policy of the Committee of Safety in sending prisoners for trial to the commissioners' courts in the counties where the offenses had been committed, except in appeals or cases of exceptional difficulty. Joshua Hopkins, held on the charge of carrying provisions to Dunmore, was sent to Princess Anne for trial.¹ It had required some trouble to secure proof against this cunning fellow, but he was caught at last coming from Dunmore's ship by a party that had lain in wait for him two days. Likewise, Thomas Mitchell, arrested on suspicion of being inimical, was sent to the York court. A very sad appeal came to the convention from eighteen ruined merchants and clerks who wished to leave the country. They had been given permission to leave on finding themselves unable to go on doing business, and actually boarded a vessel, but it had been seized for the use of the colony. As they had canceled their contracts and sold their effects before leaving, they were now homeless and destitute.² The convention granted them permission to go away — a permission seldom withheld from British-born merchants seeking to leave Virginia. It was a solution of the difficulty much more palatable to the government than confinement. Finally, Britons who were

¹ *Journal of the Convention of May, 1776*, 27.

² Executive communications, 1776.

so lacking in tact as to wish to remain in an impossible position were forcibly expelled; yet such measures were never adopted during the administration of the Committee of Safety, which always treated these unfortunates with consideration.

When the May, 1776, Convention adjourned, after providing a constitution, the Revolution proper was at an end. It was carried through in Virginia with far less effort than in most of the other colonies. Little blood was shed even in battle; no Tories had been put to death, legally or by mobs, and few had been tarred and feathered. At the same time the Revolution in Virginia, as elsewhere, had only been accomplished at the price of great loss and suffering, and hundreds of exiles had fled forth from the once easy-going and hospitable province into an unfamiliar world.

By far the greater number of loyalists went quietly abroad and little record is left of them. Those remaining behind fared hard. In May, 1776, at the time of the meeting of the convention, a dozen Tories lay in the public jail in Williamsburg, together with several prisoners of war and a number of negroes belonging to the former. These wretches, confined in the unspeakable eighteenth-century jail and obliged for the most part to provide their own food, suffered terribly. Under the impulse of distress one or another of the prisoners from time to time would plead for trial, sometimes in vain. Robert Shedden, in a letter to John Page, declared that he had done nothing hostile to America and asked for an opportunity to clear himself. John Carmont stated that he had been arrested four months before for boarding a vessel in Norfolk Harbor

and sent to Williamsburg without a hearing before the local committee. Three months later he had been brought before the Committee of Safety and ordered back to Norfolk for trial; but, nevertheless, had continued in prison in Williamsburg without a change of linen, money, or other necessities. What the condition of the prisoner in the public jail at Williamsburg was may be seen by the report of a committee appointed by the convention to investigate. This jail, it should be borne in mind, was no worse than other prisons of that period in which men starved, died of infectious diseases, or froze to death for lack of fire and clothing; in fact, it was far better than the prisons provided by the British for the American soldiers in New York.

The said jail [the committee reported], being badly planned and situated for the purpose of admitting a free air, all the prisoners are more or less distressed on that account; this inconvenience is greatly increased, as well by a large number of persons being under confinement in the same small apartment as the heat of the weather; altho' most of the rooms seem to have been properly attended to, and kept in tolerable decency, an offensive smell, which they think would be injurious to the most robust health, prevails in them all, but which they think might be in a great measure removed by burning tar in and frequently purifying the rooms with vinegar. The rooms in which the negroes are confined abound with filth, a circumstance, as they are informed, owing to the want of necessary hands to assist in providing for so large and unusual a number of prisoners; several windows may, with safety, be cut in the walls of the jail; ventilators, if properly fixed, would be of infinite service: Some complaints were made by the prisoners against the unwholesomeness of their diet, which, upon inquiry, were found to be groundless. John Goodrich, the elder, is at present, and hath been for three days past, indisposed with

a slight fever, proceeding, as they imagine, from a restlessness and peevishness under his chain; two gentlemen of the faculty have advised his removal to some other place, lest that disorder, which at present is but slight, might in a short time, for want of fresh air, terminate in a putrid fever.¹

It is pleasing to note that the convention ordered the ameliorations recommended to be immediately carried into effect and directed the removal of John Goodrich, minus his chain but under a strong guard, to some place where he might recover his health.

As the spirit of this report goes to show, the Revolution in Virginia was accomplished without any unnecessary cruelty and, so far as possible, under forms approaching those of law. Local committees suppressed the disaffected, but in a struggle which was, in effect, a civil war, self-preservation demanded the sacrifice. Many hard things were done, many men suffered imprisonment, and many more were ruined, but suffering and loss are the inevitable accompaniments of revolution. County committees, indeed, sometimes showed a small intolerance, an inquisitorial, and perhaps tyrannical, spirit, but small men will not work with enthusiasm otherwise. The central authority, the convention and the Committee of Safety, with the succeeding council, were always broad-minded and inclined towards tolerance. Mob violence, as has been noted, was rare.

Nothing is more characteristic of the elevated ideals of the convention than its release, on June 12, 1776, of two criminals in the public jail on the ground that no legitimate cause existed to try them.²

¹ *Journal of the Convention of May, 1776, 37.*

² *Ibid., 44.*

Whereas [it declared], Samuel Flanagan and Manasses McGahey have been severally committed to the public jail in the city of Williamsburg, charged with capital offenses, for which they ought, in the regular course, to have been brought to trial, at a court of Oyer and terminer and jail delivery, on the Second Tuesday in this month, which could not be held by reason of the present convulsions, and for want of a commission from the late executive power; and whereas no method is yet adopted for the trial of criminals, and it might be thought inconsistent with the liberty we are endeavoring to secure, in the most permanent manner, to keep men charged with criminal offenses in long confinement without bringing them to their trials, the Committee thinks it best to grant a pardon to the said criminals respectively, hoping that this lenity, together with the imprisonment they have undergone, will produce a sincere contrition and reformation of their manners, and that they may hereafter prove useful members to society.

So it will be seen that the Revolution had begun to show its humanitarian side, that side of social progress and development destined to be of great importance, and of far-reaching influence on the present age.

CHAPTER VI

THE DEMOCRATIC REPUBLIC

THE war and the Declaration of Independence were not precisely welcome events to the conservative planters, who nevertheless shared both in waging the war and bringing about the Declaration. They were active patriots, it should be understood, but with regrets: history, which is to a certain extent obscured by the necessary use of party names, has no exact term that fits them — Henry is so distinct a figure; Pendleton so difficult to label definitely. The obscurity is due in part to the fact that the different elements of the great patriot party have not been studied discriminately; we have been too much given to dividing the people of the colonies into sheep and goats, patriots and Tories; when, in fact, the line of demarcation was frequently slight and rather a tendency than a principle; — at least, in the beginning and before the realities of war definitely hardened the division into friends and enemies.

War was depressing to the conservatives because it meant the failure of their own particular form of resistance to England. They had placed great faith in the Continental Association and enforced it with vigor and intelligence in their stronghold in eastern Virginia, in the hope that the British government would be so impressed by a united colonial resistance as to give up its efforts to extend imperial jurisdiction in America. Even when this boycott

policy proved ineffective, the conservatives, as we have seen, struggled through nearly all of 1775 in an attempt to avert war in Virginia and to secure an understanding with Dunmore. Nor did they abandon hope of reconciliation with England for some time after the beginning of hostilities in the colony itself. The planter class, which largely controlled the assembly, entered on the struggle without a thought of independence. Only when the vigorous military policy of the British government left no doubt of its intention to conquer the colonies did the conservatives realize that separation was inevitable. The rebellion had developed into a prolonged contest between what were practically separate nations, to be fought out in regular campaigns. Then, with reconciliation a vanishing dream and a parting of the ways a present necessity, the planter class, instead of splitting into American and loyalist parties as in some other colonies, cast its decision unitedly for independence and ruthlessly overrode the scattered individuals who demurred. For while the tidewater country gentlemen were proud of their Anglican connection, they were also prepared to go any lengths in asserting the rights of Englishmen, as they conceived them, and they had now lost all illusions as to the possibility of coercing the British government into compliance with colonial demands. There was small opposition in Virginia to the Declaration of Independence: Robert Carter Nicholas, alone of important men, opposed it. At the same time to Pendleton, Bland, and their *confrères*, who had rejoiced over Wolfe's victory at Quebec, independence was not a thing so desirable in itself as it was to young radicals like Henry and Jefferson, who had lost all English feeling and become Americans. It should never be

forgotten that in the eyes of the older men the Revolution was a conservative movement, an effort to uphold their liberties against the encroachments of imperialism.

Eighteenth-century liberalism had little touched this older generation. Their ideal state was no borrowed vision from Rousseau, but the colony as they knew it, unhampered by a governor's meddling and a royal veto; they would have been well content with a governor whom they could keep browbeaten and a home administration considerate enough to ignore them. Revolution was not their fancy. They wanted the gods to nod on Parnassus — or even to snore — but they wanted the gods. They thought English thoughts and upheld English institutions and condescendingly looked down on dissenters and democrats as not of themselves. Therefore, separation from Great Britain, carrying with it the necessity for a readjustment of the constitution, was a sad necessity to the conservatives and an embarrassment besides. So long as the patriots continued to fight within the British Empire, the issues remained political and chiefly external; but independence at once raised the question of institutions and let into the arena the tribe of discontented, religious dissenters and social reformers, who wished to alter the structure of the state. The whole character of the Revolution underwent a change; no taxation without representation was superseded by other denials. In fact, the motives of the planters in embarking on the struggle with England and the political and social developments that followed bear a certain resemblance to the course of the French Revolution. That great movement was not social in its inception, but rather economic: it was brought on by the government's

financial difficulties and by efforts at remedy, and ended in anarchy; from 1789 to 1794 is a far cry. Similarly, the Revolution in Virginia began with the colony's resistance to the aggressive policy of the Tory ministry, and the men who led the revolt, and in whose hands political power mainly lay, had little thought of the betterment of society. But it is the history of revolutions that they seldom keep to the issue at stake, broadening out from a contest over a constitutional point into some large assertion of liberty. In several of the American colonies, where society was on a more simple and equal footing, this development was not marked, but in Virginia, with its fairly definite class distinctions, an attack on existing customs and institutions was inevitable. The Revolution in Virginia began with the rights of America and ended with the rights of man. In Virginia the social side of the Revolution was incomparably more important than in any of the other colonies, because there alone the upper class was numerous, powerful, and united in the patriot party, while the democratic opposition was also strong and ably led — in a word, the elements existed for a genuine and long-lasting political struggle.

The rise of democracy had been foreshadowed by the rapid spread of dissent in the decade preceding the Revolution and by Patrick Henry's career as an agitator, but no legal reforms were secured before 1776, and the conservatives prevailed over Henry in the opening months of the Revolution. Separation from England proved fatal to their party; for, though it was nearly equal in number to the progressives in the Convention of March, 1775, and controlled the Committee of Safety, it formed a decided minority in the May, 1776, Convention, which had as its chief duty

the organization of an independent government. Out-numbered as they were and put on the defensive by the untoward development of the Revolution, the conservatives nevertheless struggled hard for the mastery of the convention, and, when their own efforts at initiative hopelessly failed, used obstructive tactics with skill and obstinacy. The differences between conservatives and progressives were fundamental. The former wished the Revolution to end with separation from the British Empire, without touching the framework of colonial law and society; they hoped to continue the colonial constitution and the colonial church *minus* the British interference. The progressives, on the other hand, sought to establish a government of equal rights, a democratic state. Both sides had representatives of weight and ability in the constitution-making May Convention. Among the progressives were Patrick Henry, disappointed in his military ambition and back in his old place; Mason, full of generous political theories; and the young James Madison, now displaying his great abilities for the first time. Pendleton's prestige, notwithstanding, still stood so high that he was once more elected president of the convention over the progressive candidate, Thomas Ludwell Lee, and he could still count on the wide influence of Nicholas and Bland.

The debate over the question of independence was brief, but not altogether uneventful. Henry proposed radical resolutions of separation, leaving to the Continental Congress the duty of providing a new form of government for the colonies. The conservatives, however, supported Pendleton's resolutions, which simply declared Virginia free and independent. Henry, thereupon, in the interests of

harmony, abandoned his own plan and aided in passing the conservative declaration of independence. Thus, Virginia, first of the American States, broke the connection with England, acting on her own initiative and without reference to Congress. The convention then went on to the work of framing a constitution — the first written constitution given to the world.

The all-important committee appointed to propose a plan of a constitution included Henry, Bland, Nicholas, Mason, Madison, Archibald Cary, Edmund Randolph, and Paul Carrington — a marvelously gifted group of men. Patrick Henry, the man of the people, naturally led the democrats, Nicholas the conservatives, while Pendleton was the main opposition leader in the committee of the whole. Henry reported to his colleague, Richard Henry Lee, then in Congress, on May 20, 1776: —

The grand work of framing a constitution for Virginia is now before the Convention. . . . Perhaps I am mistaken, but I fear too great a bias to Aristocracy prevails among the opulent. I own myself a Democrat on the plan of our admired friend, J. Adams, whose pamphlet I read with great pleasure.¹

And to John Adams himself he wrote: —

Our convention is now employed in the great work of forming a constitution. My most esteemed republican form has many and powerful enemies. A silly thing, published, in Philadelphia, by a native of Virginia, has just made its appearance here strongly recommended, 't is said, by one of our delegates now with you — Braxton. His reasons upon and distinctions between private and public virtue are weak, shallow and evasive, and the whole performance an affront and disgrace to this Country; and, by one expression, I suspect his whiggism.²

¹ Henry's *Patrick Henry*, I, 411; *The Nation*, 51, 107-09.

² Henry's *Patrick Henry*, I, 413.

The conservatives tentatively put forward this constitution advocated by Carter Braxton and supposed to be written by him. It was rather closely modeled on the colonial constitution, providing a house of representatives elected by the people, which, in turn, chose a council to hold office for life and sit as the upper house in place of the colonial council appointed by the king. The assembly elected the governor and a privy council to assist him; the governor appointed judges and military officers, and the lower house the other chief officials of the State.

The progressive majority, scarcely considering this old and illiberal model, quickly took up George Mason's plan of government, beginning with the Bill of Rights. The conservatives, though too few in number to prevent the passage of this declaration, filibustered on every clause. Thomas Ludwell Lee indignantly wrote Richard Henry Lee on June 1, 1776: —

A certain set of Aristocrats — for we have such monsters here — finding that their execrable system cannot be reared on such foundations, have to this time kept us at bay on the first line, which declares all men to be born free and independent. A number of absurd or unmeaning alterations have been proposed. The words as they stand are approved by a very great majority, yet by a thousand masterly fetches and stratagems the business has been so delayed, that the first clause stands yet unassented to by the Convention. ¹

And Randolph adds: —

The declaration in the first article of the bill of rights, that all men are by nature equally free and independent, was opposed by Robert Carter Nicholas, as being the forerunner or pretext of civil convulsion.

¹ Henry's *Patrick Henry*, I, 425.

In spite of conservative opposition to liberal political philosophy, which was now finding place in practice, the progressives succeeded in passing George Mason's preamble to a constitution. The Virginia Bill of Rights is one of the noblest of political documents. Based primarily on the Petition of Rights and the Bill of Rights of 1689, it included much of eighteenth-century theory besides those guarantees of freedom incorporated in the British constitution. The opening statement of the equal right of all men by nature to freedom, independence, and enjoyment of life, liberty, and happiness was destined to become immortal when touched by Jefferson's pen in the Declaration of Independence. Other sections affirm the sovereignty of the people and the rule of the majority; separate the legislative branch of government from the executive and judicial; provide against continuous occupation of office; confirm suffrage rights, trial by jury, and the freedom of the press; and declare the subordination of the military to the civil power. The most important section made a full grant of religious freedom. This clause was attributed by Edmund Randolph to Henry, and was altered by Madison, who struck out the word "toleration" in order to broaden the assertion of liberty. The conservatives made a strong stand against it, for they feared, not without reason, that it premised an attack on the established church.¹ After a sharp contest, Henry and the progressives succeeded in carrying it.

After the Bill of Rights came the constitution, also written by Mason, but less completely his work. It is probable that Jefferson's ideas, as communicated to the

¹ Henry's *Patrick Henry*, I, 431.

constitution-makers by his personal representative in the convention, Edmund Randolph, had some weight. The new organ of government mainly followed the lines of the colonial constitution and was strongly influenced by John Adams's "Thoughts on Government," which was Henry's guide. It provided a lower house and a senate elected by freeholders and a governor elected by the two houses, which also elected most of the other officers. Representation continued, as in the colonial past, to be of counties instead of population, a feature peculiarly objectionable to Jefferson and one destined to excite many murmurings of discontent in the west, which was the under-represented section. Small counties like Warwick with only a few hundred voters elected two delegates just as did large counties with several thousand voters. In the senate, however, representation was more nearly equal. The suffrage limitation to freeholders owning fifty acres of land was not illiberal in a country where land was cheap. All in all, the constitution was less advanced than the Bill of Rights, and left the laws and machinery of government much as before, except that the lower house, freed from the restraining veto of the colonial governor and not yet adjusted to the limitations of the new constitution, had greater power than the old House of Burgesses. The constitution, in fact, was somewhat negative; it outlined what could not be done rather than what could, and, under its forms, the future government of Virginia might be the same oligarchy of planters it had been in the past, or genuinely democratic; everything depended on the political complexion of the majority in the House of Delegates.

After the adoption of the constitution, the convention

proceeded, on June 29, 1776, to elect the first governor of the Commonwealth. The progressives could not have thought of presenting any other candidate than Patrick Henry, the foremost figure of the Revolution and the most popular man in Virginia. The conservatives, still smarting from their defeat on the Bill of Rights and fearful of the future, made a last effort to keep the highest place in the government from the leader who had so long opposed them and whom they had succeeded in thwarting in his great ambition. They accordingly nominated Thomas Nelson, president of the colonial council and one time acting governor, a passive loyalist. Randolph says of his candidacy:—

Nelson had been long secretary of the Colony, and ranked high in the aristocracy, who propagated with zeal the expediency of accommodating ancient prejudices by electing a man whose pretensions to the chief magistracy were obvious from his being nominally the governor under the old order of things, and out of one hundred and eleven members, forty-five were caught by the device of bringing all parties together, although Mr. Nelson had not been at all prominent in the Revolution. From every period of Henry's life something of a democratic and patriotic cast was collected, so as to accumulate a rate of merit too strong for this last expiring act of aristocracy.¹

The conservatives, with their impossible Tory candidate and their still more impossible harking back to the colonial constitution, nevertheless made a good showing, mustering forty-five votes to Henry's sixty. And in the election of a privy council to advise the governor they had things their own way, possibly because the convention may have thought that Henry needed a balance. It could not foresee

¹ MS. History. Virginia Historical Society.

that the agitator would be sobered by time and responsibility into a conservatism almost Bourbon.

Patrick Henry, after a decade of stormy political life, now became the first magistrate of the largest American State. His election at such a time of crisis as the summer of 1776 testifies to the confidence put in him by the public and to his wide influence, which were no more than what his services to the Revolutionary cause deserved. But the great orator lost rather than gained by his elevation. His gifts were distinctly forensic, not executive; he had no liking for the dry routine of government. His administration, therefore, was mediocre, while, unfortunately for him, his office cut him off from the assembly, the one real power in the State, which had not yet become entirely freed from colonial mistrust of the executive. Because of this reserve, this instinctive clinging to tradition, the actual first place in the new government passed to the leader of the House of Delegates, who happened to be the astute and pushing Jefferson, just returned from Congress in order to work out his social reforms in Virginia.

The rival democratic leaders were not only unlike in temperament, but in outlook. Patrick Henry was essentially an agitator and one of the ablest that ever lived, the first great representative of the American democracy and still its most splendid and magnetic personality. Since his career was confined to Virginia save for three brief terms in the Continental Congress, Henry is much less generally known than Jefferson, who was greatly inferior to him in most of the qualities of leadership. Nevertheless, Jefferson, though gifted with nothing of Henry's eloquence and little of his charm and power, succeeded in displacing him as the

head of his party in Virginia and in occupying the position which should have been his by historical development, that of founder of the national Democratic-Republican Party and President of the United States. Jefferson, in all probability, would have eventually replaced Henry even if the latter had remained in the assembly instead of retiring into the governorship, for the orator was a political radical rather than a social reformer and much of a conservative at bottom. He was too acute to become a Rousseauian doctrinaire like his rival, mistrusting human nature because he knew it so well. More than that, deep down in him he was a localist; he loved the old ways, the ancient landmarks, and had no wish to live in an un-Virginian Virginia given over to the strange gods of liberal philosophy. The Revolution for him had ended with the establishment of a commonwealth under a constitution of equal political rights; he wanted no further égalitarian advances. In some way, too, hard to explain, the man had changed since his disappointment in military command. Up to that time he had been a Boanerges; after his return to civil life he settled down from fiery action into the humdrum round of office routine for which he was so unsuited; his ambition narrowed, his imagination failed. Few psychological studies are more interesting than the transformation of the radical, prepared in 1775 for any bold advance upon the future, into the obstructionist fighting his last great fight against the adoption of the Federal Constitution and magnificently losing.

" For Jefferson, on the other hand, the Revolution only began with the Declaration of Independence. That was necessary in order that other things might follow — that

wrongs might be redressed, inequalities leveled, and the State brought to the Utopian perfection all generous thinkers demanded; freedom from England was only the condition of political and social development. For this reason, Jefferson, with his definite reforms, must have supplanted Henry, who had no programme at all to offer, especially in an age of dreams when prophets often prevailed over men of action. As for the reformer himself, he was a curious mixture of prophet and practical politician, a sort of common-sense Robespierre, devoid of Robespierre's fanaticism and essential madness; what he could do to advance the rights of man he did, and for the rest — the more he could not do — was satisfied to leave to another age. That he was sincere need not be questioned; his enthusiasm began in youth and continued through life. Democracy was a religion to Jefferson, and, with all his tortuous politician's soul, he held fast to the faith, even amidst the disillusionment of the French Revolution; it was to him the miracle that makes dry bones men, the power destined in time to heal the sorrows of the world.

Needless to say, the constitution of Virginia did not meet with Jefferson's full approval, because representation remained on its old undemocratic basis and other abuses of the colonial era continued to exist. But as the assembly wielded great powers, in spite of the limitations of a written constitution, society might be transformed by legislative enactment. The member from Albemarle consequently brought forward his measures at the first session of the assembly of the Commonwealth, in October, 1776. Most noted of these reforms was the abolition of entail, which Jefferson carried in the face of a passionately resisting

minority led by Pendleton; but even more important was his work in humanizing the Virginia criminal code, which he eventually managed to accomplish. Primogeniture was the pet Virginian imitation of the English aristocracy, and Jefferson proved to the satisfaction of the democratic majority in the House of Delegates the injustice of the system by unanswerable if somewhat shallow logic. Entail had been of small importance in the rough early days when land was too abundant and cheap to need such safeguarding, but it became one of the bases of colonial society in eastern Virginia in the eighteenth century, when all the good lands in that section had been patented and extension into the western hinterland was attended by the discomforts of border life and the occasional risk of Indian forays. The conservatives, rightly feeling its importance to the aristocracy that had grown up partly by its aid and was now staggering under the Revolutionary blast, struggled hard in its defense, but vainly. Jefferson cut away this great anomaly in the democratic republic, which the constitution had left untouched.

The successful innovator immediately proceeded to attack the social order in another vital spot, the established church. What was the full meaning of the religious liberty clause in the Bill of Rights nobody knew. Beyond doubt it removed restrictions on worship, such as the requirement to take out licenses for dissenter meeting-houses and the prohibition of itinerant preaching, but whether it cut all connection between dissenters and the state church — whether it continued the state church, in fact — remained uncertain. Should the whole population, or only professed Anglicans, or anybody at all pay tithes? Dissenters held

that the Bill of Rights ended all involuntary religious relations whatever, whether of opinion or money contribution. Conservative Anglicans just as positively maintained that it merely intended the ease of tender consciences and not the curtailment of the establishment. Public opinion was divided, but probably a majority of the people opposed the overthrow of the church they had been raised in and undoubtedly a majority of the assembly did. Jefferson worked round the problem with characteristic shrewdness. A direct attack on the establishment would have failed, and, indeed, only after a struggle Jefferson describes as the severest he ever engaged in did the progressives succeed in repealing the existing acts on the statute books concerning religious worship, clearly incompatible as these were with the Bill of Rights. The repealing act, besides sweeping away the whole English system of religious restraint, exempted dissenters from contributing to the support of the establishment and suspended the salaries of all ministers until the next meeting of the assembly. This last, apparently rather innocent stipulation, proved fatal. In revolutionary times, with the spirit of liberalism rapidly growing, it was not likely that state support would be renewed, once discontinued. A number of brief suspensions postponed the settlement of the matter of tithes from 1776 to 1779, each one lessening the church's chances of rehabilitation.¹

Jefferson, in his career in the Virginia assembly, struck the old order other and almost heavier blows. He revised the laws in the interests of humanity, abolished the general death penalty for felony, — that relic of common-law barbarism which had cost so many thieving blacks their lives,

¹ *Separation of Church and State in Virginia*, 54-55.

— and attempted to secure universal education. He even drafted a bill for the gradual emancipation of slaves, but never introduced it. His was the chief part in the removal of the capital from Williamsburg, the center of tidewater social life, to the village of Richmond, a move engineered ostensibly to secure safety from British raids, but in reality to weaken the conservative faction. Richmond, indeed, proved rather more accessible to invaders than Williamsburg. The early part of 1777 saw Jefferson in the ascendant, and he remained so until 1779. At the May, 1777, session of the assembly, he nominated George Wythe for speaker of the House of Delegates against the conservative candidates, Robert Carter Nicholas and Benjamin Harrison, and secured his election.¹ This was an important event in party progress, for hitherto the office of speaker, occupied by Edmund Pendleton, had been a conservative stronghold. With its acquisition the democrats held control of all the governmental machinery.

But the conservatives, weak as they were in the fervid year of 1776 and for some time thereafter, began to gain strength with the long continuance of the war. They always had a solid corps of tidewater delegates to count on, and they became sufficiently emboldened by June, 1779, when Jefferson was elected governor to succeed Henry, to make a bid for the reestablishment of religion on the basis of a common state support for all churches. This project was offered in opposition to Jefferson's Bill for Religious Freedom, introduced at the same session and intended wholly to sever religion from political and legal connection. At the same time, that moderate democrat, George Mason,

¹ Randall's *Life of Thomas Jefferson*, I, 209.

brought forward a compromise scheme to preserve the property of the colonial church to the Anglicans without establishment, but this failed along with the Bill for Religious Freedom and the conservative bill for aiding all religions. The only result of a long debate was the final repeal of the old act of 1748 providing salaries for ministers, the act suspended from session to session since 1776.

By the mid-Revolutionary year of 1779 the Commonwealth bore all the marks of a permanent state, and loyalism, except around Norfolk, had been pretty generally repressed. The Scotch merchants and clerks who had bargained at every village and crossroads were now banished refugees, as well as the few native Virginians devoted enough to cling to the imperial cause in spite of all. But the political and social ideals of democracy had not yet prevailed; the conservatives, who saw what the progress of the Revolution meant, continued to oppose it and only waited a favorable opportunity to make their opposition effective. They needed two things—a means of discrediting their opponents and relief from the pressure of war, which concentrated attention on military affairs and tended to break down social distinctions. The first want was supplied by the failure of Jefferson's administration; the second came a little later with the treaty of peace in 1783.

CHAPTER VII

RULE OF THE COUNCIL

POLITICALLY speaking, there were two phases in the Revolution in Virginia — the external and the internal conflict. In the first place, all patriots saw that suppression of pro-English feeling was a policy essential to the success of the Revolution; toleration of loyalism was impossible. They were, therefore, entirely united on the question of the war and treated British sympathizers as alien enemies, while at the same time they were themselves divided into conservative and liberal factions on the issue of the Revolution as a political and social development. There was always a large latent element of opposition to the Revolution, which failed to become formidable because of unfavorable circumstances. The county committees early in the contest had prevented the formation of a Tory party by promptly repressing loyalists and driving them from the country. The convention and Committee of Safety more or less warmly coöperated in this work, and the executive created by the new constitution, the council, found that the enforcement of the laws against Toryism was one of its most important labors. In fact, the government had to contend with discontent, malingering, and actual disaffection until the very end of the war.

The executive council took up its task on July 22, 1776. Its duties were much the same as those of the Committee of Safety, though its powers were circumscribed by the

written constitution. The council, indeed, was the successor of the colonial council in administration without the judicial and legislative functions of that body. Theoretically the council advised, actually it ruled through the Revolutionary period; the governor acted as the presiding head of a board rather than as an independent functionary. When Patrick Henry was absent, John Page, the lieutenant-governor, took his place without any apparent difference in the running of the governmental machine.

Page and the other councilors formed an experienced and cautious group of advisers, with whom, at first thought, it might have seemed somewhat difficult for Henry to work in harmony. But the fast-taming radical managed to go well in harness with his associates and gave Virginia a fairly capable if uninspired administration. It is needless to go into the general work of the council in any detail, because that was just what ordinarily falls to the lot of an ill-regulated government in war-time. The colonial administration was singularly inefficient and slovenly and the constitution had done nothing to improve matters. The council at first handled military and naval affairs, but later war and navy boards were created by the legislature to relieve the pressure. The only result was that administration became thoroughly disjointed and conflicting.

Among the first problems that faced the councilors on assuming office were the loyalist cases handed on by the Committee of Safety. They heard the appeal of a Tory, Maurice Wheler, from the verdict of Lancaster court, which had pronounced him as "being inimical." They concluded that there was "no reason to approve of the Verdict given," but in the absence of part of the evidence

referred the case back to Lancaster for retrial.¹ Like the Committee of Safety, the council was moderate in its policy towards Tories.²

In fact, the council rather liberally interpreted the laws intended to rid the country of loyalists or keep them in proper subjection; it preferred mild measures. In some cases suspects confined in prison were given their freedom on condition of leaving the State. In other cases, like that of Edward Murfield, who had been sent from Norfolk to Williamsburg under suspicion of disaffection, the accused were discharged on taking a pledge not to assist the enemy.³ James Walker, Joshua Hopkins, and John Carmont, imprisoned in the public jail at Williamsburg, were released on giving security to stand trial in their respective local courts.⁴ Hopkins's trial by the Princess Anne court resulted in a conviction of disaffection, and the council confirmed this decision, but because of the prisoner's age and infirmity allowed him his liberty on giving security for good behavior.⁵ It extended protection to the unfortunate Tory, Ralph Wormeley, Jr., who claimed that he had been disturbed by a mob while living on parole on his father's estate in Frederick. The council offered him a guard, and finally the assembly, in May, 1778, released Wormeley from his bond and allowed him to go home.⁶

More serious cases of disaffection also frequently received lenient treatment. John Goodrich, who was rightly considered dangerous, was sent to jail in the inland village of Charlottesville in the company of another loyalist,

¹ *Council Journal* (1776-77), 23.

² *Ibid.*, 140. ³ *Ibid.*, 61. ⁴ *Ibid.*, 36. ⁵ *Ibid.*, 97.

⁶ *Journal*, House of Delegates (May, 1778), 29.

Andrew McCann, but three other prisoners sent at the same time to Charlottesville were allowed the range of the town limits, as were George Oldener and Charles Henley,¹ convicted of giving intelligence to the enemy and confined at first in the New London jail.² The council, in general, preferred to relieve Tories from actual confinement and allowed the Augusta county-lieutenant to use his discretion in paroling prisoners at Staunton.

That some degree of rigor was necessary in guarding the more dangerous loyalists was illustrated by the Goodriches. Bartlett Goodrich and John Cunningham had been convicted by the Northampton court of violation of the Association; on their appeal the council confirmed the decision and put the prisoners on parole at New London. Goodrich and Cunningham broke their pledge not to go beyond the town limits and were sent to Amherst jail, together with James Parker, who refused to give parole. In August, 1777, John Goodrich, the elder, escaped from Albemarle jail in the company of three other Tory fellow prisoners. The council offered rewards for them and they were soon captured, owing to the difficulty of reaching the seaboard from the far interior. The council sent Goodrich to confinement in Bedford and the others to Williamsburg.³ Goodrich complained to the council in October, 1777, that he had been kept in rigid imprisonment for eighteen months, "loaded with irons too heavy for mortal to bear, and exposed to daily insults and reproaches from a people, that he is forced to say are insensible to the feelings of humanity or

¹ *Council Journal* (1776-77), 27.

² Legislative Petitions. Princess Anne.

³ *Council Journal* (1777-78), 123.

delicacy. However reprehensible the conduct of your petitioner may be, yet he begs leave to affirm that it has been greatly aggravated by popular report and prejudice." He asked to be permitted to live on parole on one of the plantations allotted for the support of his family.¹

This Tory family suffered great hardships. The commissioners appointed to manage John Goodrich's estate allowed Margaret Goodrich, in July, 1775, one hundred and fifty acres of land in Nansemond and five hundred acres in Isle of Wight, with the growing crops and forty pounds for slave hire.² In October, 1778, Margaret Goodrich reported to the assembly that her allowance was entirely insufficient, since her slaves had been sent to the lead mines and the money granted her was barely sufficient to hire one slave, making it necessary for her to borrow money in order to clothe her children. In the latter years of the war, the Goodriches, as we have seen, were able to retaliate for their sufferings; Bartlett Goodrich proved especially annoying as a privateer. In July, 1778, the council directed the navy board to assist several persons anxious to fit out vessels to cruise against the Goodriches, and Congress sent two ships to lie in wait for them off the Virginia Capes.

Many loyalists underwent examination by the council in the summer of 1776, but thereafter their number lessened, as most persons at all openly disaffected passed into exile in some distant part of the State or left the country. The penalties attending indiscretion taught caution to remaining malcontents. At the same time the attitude of the government towards loyalists grew harsher: it had acted

¹ *Journal*, House of Delegates (October, 1777), 23.

² *Council Journal* (1776-77), 96.

hitherto with comparative mildness, but a change came in the latter part of 1776 with the great reverses suffered by the American army in the North. It had become evident that the States were engaged in a long and exceedingly doubtful struggle, and no place remained for the openly disloyal or passively disaffected. The time had come for forcing all men to make a definite choice of sides. The first session of the general assembly, in October, 1776, witnessed the increase of penalties for disaffection and the passage of an act against treason, which was defined as levying war against the Commonwealth and aiding and comforting its enemies.¹ The penalty was death without benefit of clergy and forfeiture of property; the general assembly alone had the pardoning power. The law went on to provide heavy punishments for lesser degrees of disloyalty. Maintenance by publication, word or act of the authority of king or Parliament, was forbidden under pain of fine and imprisonment, not to exceed £20,000 and the term of five years.

The government also aimed a final blow at the one genuine class of loyalists in the community, now greatly reduced in number, it is true, but not yet entirely weeded out. The House of Delegates, on December 18, 1776, passed a resolution for the expulsion of the remaining British merchants and directed the council to carry the order into effect. The banished included all natives of Great Britain who had been in partnership with British merchants or acting as their agents at the time Parliament passed the act restraining American trade, with the exception of those who had shown attachment to America or had families in

¹ Hening, ix, 168.

the country. Exiles found in the State after a certain time were to be considered prisoners of war; county courts were required to furnish lists of British subjects within their jurisdictions.¹ The council enforced this drastic measure with moderation; the county courts reported names and it decided whether the resolution applied in their cases. Reports began to come in from the counties in March, 1777. Sometimes the council was stern, as in the cases of James Sterling and James Dunlop, whom it decided were "within the description of persons who are to depart the State unless they can make appear their uniform attachment to the American cause."² But Archibald Gowan and John Dyer, two unfortunates presented by Hanover court as Britons, asked for an extension of time to make preparations for departure and received ample space.³ Again, when Halifax court presented several men for expulsion, the council decided that they had not been British agents on January 1, 1776, and so were not subject to exile.⁴ The Henrico court examined James Buchanan as one of the proscribed, but the council overlooked his partnership with British merchants and adjudged him friendly to the American cause. Yet it was careful to see that orders of expulsion were carried out. It advised the governor, on March 26, 1777, to issue a proclamation to the county-lieutenants ordering them to arrest "denounced" loyalists whose time for removal had expired and send them to the two detention places for the disaffected decided on.⁵ Thereupon some of the remaining Britons were carried to these points,

¹ *Journal*, House of Delegates (October, 1776), 103.

² *Council Journal* (1776-77), 355.

³ *Ibid.*, 342, 399.

⁴ *Ibid.*, 384.

⁵ *Ibid.*, 384.

though the government did not incline to act rigorously, for it allowed John Miller to go from one town to another and finally to the Augusta Warm Springs for medical treatment. Another prisoner in a detention point, Archibald Bryce, received permission to live in Chesterfield on parole not to leave the county.¹

Banishment of persons for such technical reasons as those set forth in the December resolution naturally worked a good deal of hardship, sometimes affecting people innocent enough in spirit if guilty by the letter. A case of this kind was that of John Fisher, of Halifax,² who had lived in Virginia for more than twenty years, and who, while not engaged in business after 1775, the Halifax court, nevertheless, considered an exile because of debts due his firm from a time as far back as 1765. The council allowed him to live at home on parole and the assembly agreed to his becoming a citizen. It is evident from the records that a considerable number of individuals suffered banishment at this time. In one instance more than eighty Britons, under the leadership of Andrew Johnson, appealed to the council for leave to buy a ship and sail to England. The government willingly acceded and Johnson and his associates secured the vessel, which proved to be slow in arriving. When the Albion was finally ready to go, in May, 1777, the British fleet in the Chesapeake objected to her sailing from a Virginia port. After further delay, the assembly, in June, 1777, granted the Albion passengers permission to leave in British warships or any other craft.³

Public opinion was less lenient to loyalists than the

¹ *Council Journal* (1777-78), 256. ² *Legislative Petitions. Halifax.*

³ *Council Journal* (1776-77), 356, 415.

council. A petition came to the assembly from Mecklenberg asking for the expulsion of all British merchants and agents, married or unmarried, and for severe punishments for refusal to take the paper currency in payment of debts.¹ The assembly, at the May, 1777, session, took a further step for weeding out loyalism by requiring males over sixteen years of age to take an oath of allegiance to "the Commonwealth of Virginia as a free and independent state." It became the duty of county courts under this act to tender the oath and keep accounts of persons swearing and refusing. Non-jurors were to suffer disarming, the loss of the rights of office-holding, voting, serving on juries, suing for debts and acquiring land, and besides were to pay double taxes. The oath was generally administered and taken throughout the State, though with exceptions, and innocent people frequently got into trouble on that account. All through 1778 there was complaint from unfortunates who had inadvertently failed to take the oath and found themselves mulcted in double taxes. The law was so inefficiently advertised in thinly settled communities that many individuals did not take the oath in time because they had never heard of it. Apparently few refused to swear because of actual disaffection.

The case of Joshua Tinsley is fairly typical of the hardships caused by the law. An old man, keeping close at home, he had failed to take the oath because of an impression that the magistrates who tendered it would visit each man's house for that purpose, instead of merely attending militia musters, as they did. On account of this mistake, Tinsley found his tax bill multiplied from £3.10.9½ to

¹ Legislative Petitions. Mecklenberg (B2721).

£7.1.7.¹ In some counties where justices were scarce, the inhabitants occasionally had difficulty in finding means to take the oath, and there were accidental non-jurors everywhere. So many people incurred the penalty of double taxation from ignorance of the law that a supplementary act was passed extending the time limit for swearing, but even this did not remedy the trouble.² Generally speaking, the magistrates seem to have been careless in enforcing the law and in some cases actually negligent of duty. The assembly afterwards increased the punishment for non-juring to triple taxation, with the date, May 1, 1779, as the final day of grace. This provision increased the distress of innocent non-jurors without reaching the few remaining Tories, who managed to evade the oath despite every effort of the government.

Many patriots suffered for purely technical reasons. Joseph Holt, of Charlotte, was fined triple taxes, though he had served in the Continental army; he had taken the oath a few days after the time expired.³ John Nelson, of Charlotte, came to take the oath before a magistrate, who had no form, but told him that willingness to subscribe was sufficient. Nelson accordingly went home satisfied, only to discover later that he was subject to triple taxation. In the fall of 1779 the assembly found it expedient to grant relief to the large number of accidental non-jurors writhing under their fines. The extra tax penalty was repealed, and people who had paid it and who were also good Americans were to be reimbursed out of their future taxes.⁴

While the assembly by various acts and tests drove out

¹ Legislative Petitions. Essex (A5349).

² *Ibid.* Charlotte (A3993).

³ *Ibid.* Prince William.

⁴ Hening, x, 194.

of Virginia the class not in sympathy with revolution, it by no means succeeded in suppressing the spirit of disaffection. It was, indeed, wise mercilessness to expel the Scotchmen who might have acted otherwise as the nucleus of a hostile faction, but such a policy could not prevent the spread of discontent among the native population, part of which, though nominally patriotic, had no enthusiasm for the cause. By the summer of 1777 the early zeal had pretty well cooled everywhere, and the length and expense of the war were having their effect on the faint-hearted, who murmured against the heavy taxes. In July it was reported to the council that emissaries of the enemy, sometimes in the guise of commissary officers, were going around offering extravagant prices for commodities, in order to depreciate the currency, and discouraging the people by injurious reports of the condition of Washington's army.¹ On the Eastern Shore, cut off from the mainland and open to British raids, many of the negroes had run away to the enemy and some of the white inhabitants were suspected of treasonably aiding them. To remedy this the council advised the removal of suspects from the Eastern Shore to the interior of the State, and it further directed the Norfolk and Princess Anne authorities to send the disaffected from those counties to Williamsburg except such as might be prosecuted at home under the treason law. Disaffected or criminal inhabitants assisted the enemy's privateers in plundering along the Chesapeake shores. In September, 1777, Captain Barron, of the Virginia navy, captured one Dunbar, of Gloucester, who had made himself notorious as a freebooter.²

¹ *Council Journal* (1777-78), 37. ² *Virginia Gazette*, October 3, 1777.

The council was driven in August, 1777, under the immediate fear of an English invasion, to take further steps against the disaffected. It issued an order to militia commanders at all stations to require persons refusing to take the oath of allegiance, or "suspected of evil designs," to remove ten miles from any camp, garrison, or place where the enemy might be. The order affected a good many people, and the assembly, at its meeting in the fall, fearing that the executive had acted unconstitutionally, passed a special act of immunity. As the expected invasion failed to materialize, the council rescinded the order and permitted those who had been driven from their homes to return on giving parole. At the same time a number of persons arrested on the Eastern Shore and sent to Williamsburg were released on taking the oath.

Cases of disaffection continued to be fairly numerous in 1778. Edward Ker, a justice of Accomac County, was removed from his office on the charge of being inimical, and William Montague, of Lancaster, was refused a commission as justice on similar grounds.¹ One Yerby, a Lancaster militia captain, had the audacity to deliver a French vessel to British warships in the Rappahannock, though his company had been mustered for its protection. The council ordered the arrest of the offenders and reimbursed the shipmaster. Traitors like Yerby occasionally ran the risk of violence. Robert Parker, in May, 1778, complained to the assembly that on account of an unjust suspicion of his being inimical the militia had burned his house and a court-martial had sentenced him to five years' imprisonment.²

¹ *Council Journal* (1777-78), 217.

² *Journal*, House of Delegates (May, 1778), 10.

The government pardoned him. The council, indeed, continued to treat offenders with considerable leniency. Prisoners, instead of being confined in jail or forced to leave the State, were frequently paroled within certain limits. The assembly, more susceptible to popular opinion, was more inclined to rigor. As if the laws were not already severe enough, the House of Delegates, in October, 1778, considered a bill "to expel from the Commonwealth, and to prevent in future the return of persons who have shewn themselves inimical to America."¹ This measure had been immediately suggested by protests from Norfolk and the neighboring counties declaring that there were still people living in the State who considered themselves subjects of the king and asking for their expulsion. The bill passed a second reading and then failed.

The House of Delegates heard the appeal for admission to the State of a number of persons who had come from New York to Hampton in a flag-of-truce vessel. Most of them had been abroad and now wished to return to Virginia. Charles Mortimer, who had gone to England in 1775 and who claimed to have befriended American prisoners there, was allowed to enter the State on taking the oath of allegiance. Alexander Trent, returned from being educated abroad, and Elizabeth Muir were also admitted. Other immigrants or returning Virginians who were considered "unfriendly to the rights and liberties of America" failed to secure the same privilege.² Such exclusion may seem harsh, but the policy of banishing and keeping out loyalists was pursued more rigorously in other States. Massachusetts even wished to coöperate with Virginia in the exclu-

¹ *Journal*, House of Delegates (October, 1778), 9.

² *Ibid.*, 40.

sion of each other's loyalist exiles, but the scheme came to nothing.

The year 1779 saw the beginning of the saddest, and to us, after the long lapse of time, the most regrettable feature of the Revolution — general confiscation. Hundreds of estates in all parts of Virginia, comprising many thousands of acres, had been left vacant by their refugee owners, who in most cases were Britons that had left the country at the outbreak of the war, or were Virginians living abroad and represented by relations or agents. These estates were now condemned by escheators and sold for amounts of depreciated currency representing a very small value in specie. The forfeitures, as in the case of almost all similar seizures, brought in little to the State, but greatly benefited purchasers, and there can be small doubt that much corruption and injustice were practiced and that many estates were wrongfully condemned and sold. Occasionally confiscation had occurred early in the Revolution. Thus, Dunmore's property was sold in 1776, and the council, on November 16, 1776, heard the appeal of James Parker from a decision of the Accomac commissioners' court directing the sale of his estate and condemning him to imprisonment during the war, an unusually severe sentence. The council confirmed the decision and sent Parker to New London on parole, as he had accepted a commission from Dunmore.¹ Property seized before this time had been chiefly marine, taken under direction of Congress, though ordinances of the convention sanctioned the forfeiture of estates of persons aiding the enemy. Few estates, however, were confiscated under this authority, and forfeiture was not immediately adopted by

¹ *Council Journal* (1776-77) 233.

the permanent government when it came into power late in 1776. An act of 1777 put the lands, slaves, stock, and other property of British subjects, including debts, into the hands of commissioners to manage in the interest of the State.¹ Debts due British subjects might be paid into the treasury and the government would give discharge. This act affected hundreds of people, especially the debt clause. Planters stood indebted to British firms for great amounts, and many of them took advantage of the opportunity to rid themselves of their obligations in depreciated paper. The government made little by these transactions and at the same time laid up trouble for itself against the time when England demanded a reckoning for its merchants. Afterwards the act was repealed, probably because it was seen to be little better than repudiation.

The assembly, in May, 1779, passed from guardianship to confiscation. The act "concerning escheats and forfeitures" ² voided the titles of all property of aliens held by commissioners and directed the government to institute forfeiture proceedings. One month was allowed native claimants of such estates to file their pleas, after which limit the old titles were forever barred, though claims might be advanced on the money proceeding from the property sales. The act also defined British subjects, who were all Britons living outside the United States on April 19, 1775, — the date of Lexington, — and who had not since then proved their allegiance to the United States; all persons residing in the country at that time who had adhered to the enemy or who had joined them. Immediately after the confiscation measure, the assembly aimed what

¹ Hening, ix, 377.

² *Ibid.*, x, 67.

was intended as a finishing stroke at the few loyalists who continued to linger in Virginia. The House of Delegates, in June, 1779, passed a resolution directing the governor to banish all Tory refugees and take means to prevent the return of persons designated as British subjects.¹ The House further considered, but failed to pass, a resolution for disarming "all persons inimical or disaffected to the liberties of America," which directed local committees to search for suspects and tender them a stringent oath.²

The essential injustice of confiscation as a policy and its cruel hardships soon became apparent. As long as commissioners held estates in trust, owners might hope to get them back some day, even though sadly plundered and depreciated, but with the condemnation and sale of property all chance of recompense practically disappeared; the needy State would not be able for years to pay to owners accidentally sold out the money obtained from sales, which were beggarly amounts at best. Escheators took great license in their proceedings; every estate deserted by its owner for any reason whatever was liable to seizure and forfeiture, and many innocent persons suffered loss. One case illustrates a number. Lucy Ludwell, a Virginia woman, while in England, had married John Paradise, a Greek. The couple continued to live in England and confided the care of Mrs. Paradise's Virginia estate to an agent. Paradise, not having been naturalized in England, was not a Briton, but nevertheless his property in Surry and York Counties, Virginia, was condemned, though the court had not found him a British subject.³ An inquisition

¹ *Journal*, House of Delegates (May, 1779), 68.

² Executive communications, 1779. ³ Legislative Petitions. Surry.

in James City found both husband and wife to be British subjects and condemned their property in that county.

Notwithstanding many confiscation proceedings and many sales, the State derived small profit, partly because land auctions conducted in war-time in a country without currency could hardly bring in a large return, and partly because the government allowed obstacles to be put in the way of forfeiture¹ and seemingly made little effort to prevent fraud in the conduct of the sales. The chief effect of confiscation, so futile as far as the State was concerned, was to pass over to astute neighbors abandoned lands and lands of uncertain ownership at purely nominal prices; it is doubtful whether the returns in badly depreciated paper were worth the trouble of conducting sales. If the government had required payment in articles of value, like tobacco and provisions, some good would have resulted; as it was, many people, hardly a handful of whom were active enemies, lost their Virginia lands and thereby paved the way for the rise of numerous small farmers to affluence. This was one of the most important social results of the Revolution.

In the early years of the war the Virginia government was actively engaged in suppressing loyalism, but it was not called on to deal with insurrection. The State was in no great danger of internal disturbance so long as it remained uninvaded by the British. From the fall of Dunmore to 1780 the council was disturbed by only one instance of disaffection serious enough to threaten any military results. This was in the celebrated case of Josiah Philips.²

There was little noteworthy about the man. He was a

¹ Executive communications, 1779.

² *American Historical Review*, I, 445, *et seq.*

laborer living in Lynhaven Parish, Princess Anne, the one really Tory county. Philips himself had little concern with political issues; he was an ignorant and brutal man who took advantage of the opportunity offered by disturbed conditions to plunder his neighborhood, and if it were not for the fact that the government regularly attainted him of treason he might be passed over with a few words.

Philips accepted a commission from Dunmore early in the war, because British commissions were going begging and might serve as warrants for miscellaneous acts of violence. He gathered a small band of followers, whites and runaway slaves, and began to plunder the isolated and swamp-covered country on the border of Virginia and North Carolina. By the summer of 1777 he had become so notorious that John Wilson, the much-tried Norfolk county-lieutenant, reported that he and a dozen others were threatening people and doing mischief.¹ The council thereupon, on June 20, 1777, advised the governor to offer a reward for his capture. Philips was arrested and the government paid the reward.

But he either escaped or was released and soon made himself a genuine nuisance. His band now included about fifty men, a force of sufficient size for plundering a thinly settled community. The council, on May 1, 1778, directed the authorities and militia in Princess Anne, Norfolk, and Nansemond to coöperate for his capture. Militia was ordered out but failed to arrest the criminals, and Wilson advised the removal of certain families in league with them. The Philips gang was accused of committing robbery, arson, and murder. The council sent Wilson's letter to the

¹ *Council Journal* (1777-78), 19.

assembly and ordered a company of regular troops to the scene of disturbance.¹ The House of Delegates was so moved by the letter that it feared that an insurrection was about to break out in the Norfolk region, known to be lukewarm or hostile towards the Revolution. Consequently, it decided, on May 28, 1778, that Philips and his followers were guilty of treason and should be attainted if they did not surrender before a certain date. Jefferson undoubtedly inspired these proceedings, the precedent for which, like so many other Revolutionary precedents, came from the English Civil War. The bill of attainder passed the House and Senate without opposition; it named June 30, 1778, as the last day of grace.²

Philips did not surrender, but was hunted down by the State troops. Several of his band were captured and several others killed,³ among the latter one Will, a negro, who had distinguished himself for ferocity. Will was shot under the attainder, which, of course, made the attainted outlaws, but Philips, when captured, was not immediately executed as might have been expected, since no trial was necessary. Instead of proceeding under the attainder, the government indicted him in the general court, on October 23, 1778, for robbery of twine and hats; two of his associates were tried with him for the same offense. All three were found guilty of felony, condemned to death, and executed on December 4, 1778.

There was nothing very remarkable about Philips's attainder. The assembly claimed and exercised wide powers, and the treason laws allowed large scope. Probably when

¹ *Council Journal* (1777-78), 260.

² Hening, x, 463.

³ *Council Journal* (1777-78), 310.

the government recovered from its fright and realized that Philips was only an ordinary robber instead of a traitor seeking to light the torch of loyalist revolt, it preferred to use ordinary legal measures in place of the attainder.¹ The point about the case that has excited comment is its curious sequel. In 1788, when the Virginia Convention was debating the adoption of the Federal Constitution, Edmund Randolph arose one day and declared that Josiah Philips had been the victim of an act of attainder, under which he had actually suffered death.² This astounding statement came from no less a person than the former attorney-general, who had conducted the prosecution of Philips in the general court on the charge of robbery. Stranger still, Patrick Henry next day defended the execution of Philips under the attainder, forgetting the regular trial. Randolph's motive in making his statement is evident, for he was endeavoring to discredit the Revolutionary government of Virginia in the interest of the new Federal plan by displaying its tyranny and arbitrary methods. He probably counted on Henry's forgetfulness of the facts, and if so he calculated well. The former governor's memory had failed him as to the trial, but it was less at fault than might appear. Many irregularities had occurred in connection with Philips. Will had been hunted down like a mad dog under the attainder and several others suffered a like fate. A slave named Bob, belonging to the estate of James Wilson, had been tried in Norfolk court in August, 1778, convicted of treason and robbery and executed; he was in all probability a member of the Philips

¹ Tucker's *Blackstone*, I, appendix, 293.

² *American Historical Review*, I, 449.

gang.¹ It may well be that Henry confused these cases with that of Philips himself.

The destruction of this band quieted the uneasy south-east for a time. The sternness of the government and its evident intention to proceed to extremities in the case of actual insurrection overawed any malcontents who might have been disposed to raise the British standard.

At the close of Patrick Henry's administration, the government under the new constitution was firmly established. While the law was undergoing radical change at the hands of Jefferson, administration did not differ much from the colonial period. This continuance of tradition was due to the council, which conducted the routine business conservatively and intelligently. Unfortunately, it did not realize that a reorganization of the whole administrative system was essential for a government engaged in carrying on a long and exhausting war.

¹ Legislative Petitions, Norfolk (B4223).

CHAPTER VIII

THE FALL OF JEFFERSON

No man was ever more successful in moving with the spirit of his age than Jefferson, who, by way of reward, received all the honors his country could bestow and the veneration of successive generations of his countrymen. It seems hard to realize, then, that the great exemplar of democracy in the mid-channel of his career narrowly escaped shipwreck complete and utter. That he did escape and finally triumphed was due not to dexterity or power of will, but to his capacity for expressing the ideals of the age in which he lived. He survived, not so much because he was a skillful politician as because he was a vivid writer.

Thomas Jefferson was elected governor of Virginia on June 12, 1779, succeeding Patrick Henry, the first governor under the Commonwealth, who retired to the country in broken health. Jefferson had already succeeded Henry in something more important than the office itself — the leadership of the progressive or democratic party in Virginia. He had changed the Revolution from a struggle for external political liberty into a movement for social reform, and in so doing displaced Henry from his chieftainship. The orator had sunk into a secondary place, while Jefferson had grown to be the leading figure in the State. His election to the governorship was a tribute to his activity as a revolutionist and reformer, as well as his natural reward as the head of the victorious democratic party.

At the moment of his election Jefferson wielded an influence such as no Virginian had ever possessed. He had carried out great reforms in spite of conservative opposition and had won the confidence and support of the great mass of poor and obscure men throughout Virginia. It is likely that the conservatives, who nominated John Page to oppose him, apprehended that his tenure of the executive chair would result in a further extension of his (to them) pernicious influence. "In a virtuous and free State," Jefferson said in his speech of acceptance, "no rewards can be so pleasing to sensible minds, as those which include the approbation of our fellow citizens. My great pain is, lest my poor endeavors should fall short of the kind expectations of my country."¹ If there is a power which sometimes playfully inspires merely formal utterances, turning them into prophetic, that power lay behind these words. Never were the flattering apprehensions of a successful candidate on assuming office better justified. Within the short space of two years Jefferson, in the judgment of a majority of the people, had fallen signally short of their expectations and an investigation of his administration was formally proposed in the assembly.

This complete reversal of public opinion, which tumbled the democratic chieftain from his great position to the depths of apparent ruin, with impeachment in sight, resulted from the easy triumphs of the British arms in Virginia in the latter period of the war. In what measure the patriot disasters were due to circumstances that Jefferson could not be expected to control and to what extent to his own mistakes and weakness cannot be exactly estimated,

¹ *Journal*, House of Delegates (May, 1779), 31.

but an examination of the evidence shows that he was certainly not free from blame. Jefferson was bitterly censured at the time. Hostile critics, both conservatives and progressives, did not hesitate to charge him with incapacity and neglect, leading us to believe that his own faults were at the bottom of the military collapse in Virginia in 1781. On the other hand, his worshipful admirers, such as his biographer, Randall, looking back at these events from the period of final triumph and apotheosis, insist that he was wholly the victim of circumstances, and not, in the least degree, at fault. And his conduct was viewed in a third light. In the later years of Jefferson's career, when the unsatisfactoriness of his administration in Virginia was remembered but remembered vaguely, party writers, seeking ammunition to fire at him from their failing guns, invented the legend of his cowardice, because of his enforced flight before the British army, a legend which that writer so skilled in misrepresentation, Goldwin Smith, was glad to rake up against his memory. "As governor of Virginia in the war he had shown lack of nerve if not of courage."¹ The accusation of cowardice was hardly contemporary and may be dismissed, but the charge of incompetence and neglect was so strongly urged and generally accepted in those dark days when Virginia lay at the mercy of every invasion of the enemy, that Jefferson came within a measurable distance of the end of his political career, since impressions gained in a moment of crisis, however unjust, are likely to be lasting. The question put is whether this criticism, that the governor failed to provide for the defense of the Commonwealth and allowed himself to be caught without

¹ *The United States*, 135.

means of resistance, was just in the main, or whether he had done all that a man could be reasonably expected to do, as his defenders allege, and merely earned the inevitable blame poured out on the ruling powers when a state suffers military disaster.

In the first place, it is necessary to note that the governor in the last years of the war had an exceptionally difficult position to fill. After three years of constant warfare, the resources of the State, which had been expended without reserve for Washington's army, the Southern department, and other military purposes, were greatly diminished. Specie was gone, paper almost worthless, and taxation bore heavily on the people, who by this time had lost most of their enthusiasm for liberty. The conditions for making a successful resistance to the British arms were, therefore, much less favorable in 1780 and 1781 than earlier, when it is probable that an advance on Williamsburg would have met with stout opposition. Besides, the government of Virginia, unaccustomed before the Revolution to violent strains, was so imperfectly organized that administration in all departments, and particularly in the military, was exceedingly inefficient. Furthermore, the constitutional limitations of the governor's authority greatly hampered his action in all crises which might happen to coincide with a vacation of the assembly, the one powerful branch of government. The constitution-makers, in providing safeguards against a tyranny, succeeded in furnishing the State with a weak executive to carry it through a doubtful and protracted war. Still another cause contributed to the helplessness of the State, giving the enemy a chance to march and plunder from one end to another absolutely

undisturbed. In the earlier years of the war a respectable force of semi-regulars had been maintained in Virginia for local defense, but in 1778, owing to the losses sustained by the Virginia regiments in the Continental line, and also, possibly, to economy, the two State regiments were sent northward to complete the Continental quota; home defense was left largely to the militia.

When these potent facts are taken into consideration and given their full weight, it still certainly appears that Jefferson did not do all that an able and practical man might have done to prepare for invasion, for that was a calamity which might have been seen to be inevitable once the British began to operate on a large scale in the South. An earnest effort to conquer the South sooner or later must lead to an attack on the great Southern Commonwealth; the warning was ample and should have been heeded. When the enemy did come at last, they met no opposition worthy of the name. The whole country lay at their mercy.

Right here it is just to acquit Jefferson of neglect of duty. Few more conscientious and industrious executives ever lived; he was always engrossed in the details of his office, and if he erred, as it clearly seems he did, he erred from want of judgment and driving power rather than from any lack of zeal or labor. His failure to arrange an adequate defense of the State was apparently due in large part to two causes. Foremost came Jefferson's penchant for strict constitutionalism, for strict construction ideas did not originate with the Federal Constitution, but descended from the colonial period. The Revolutionary War was mainly a war of strict construction patriots against broad construction imperialists. It was this exaggerated respect

for the Virginia constitution which prevented Jefferson from using strong means of doubtful legality at times when it is more expedient to go than to reflect upon the exact order of the going. The other reason for his failure to do his full duty lay in his inability to grasp the principles on which military operations are successfully conducted; to the last Jefferson was a man quite without military understanding, a deficiency even more unfortunate when he became President of the United States than it had been when he was governor of Virginia. Both of these failings arose from the fact that he was a doctrinaire and not a man of action; he was a shrewd and successful practical politician and political leader, but he was anything but a good administrator. In agitation the doctrinaire need not be a man of action, for doctrinaires keep the world alive, but in war, which is the conflict of brute force, the man of action is demanded. But as it happens Moses frequently occupies the place of Joshua.

Jefferson owed a great part of his success to his limitations, which, however, inevitably hampered him in other ways. His mind was exceedingly alert in the realm of special observation, but he formed his opinions on general questions early in life and seldom changed them. Thus, it is unlikely that the French Revolution shocked his serene faith in the ultimate truth of his political principles. Likewise, he came early to the belief that the proper defense of a free and virtuous people is in its militia rather than in trained soliders, an idea which was somewhat shaken by his unhappy Revolutionary experience, but which seems to have survived in him until the time of his Presidency. The ideal of a people rising spontaneously to defend its hearth-

stones is one thing; the reality of a mob of untrained, half-armed farmers attempting to oppose regulars is sadly different. Jefferson never understood that efficiency in war, like efficiency in everything else, is only secured by preparation.

For the first year of his governorship the democratic chief had no very serious problem to face. He discharged the duties of his office faithfully, working with great zeal to support the American armies, North and South. The fragmentary records show him busy over the many matters within his sphere. They also illustrate his fundamental incapacity as an administrator in stormy times. The chief difficulty confronting the State in 1779 was that of raising money to meet the Continental requisitions and the expenses of the State government; heavy taxation was required. A scientifically managed government might have handled the agricultural resources at its disposal so as to remain in a more or less sound condition, though the feat would have been difficult. The Virginia treasury was in great confusion, and administration while honest was uneconomical; Virginia paper depreciated much more than was necessary, for the amount was not very great in comparison with the wealth of the State. In order to meet the emergency, various financial expedients were tried, among them the confiscation of the estates of royalists and the debts due British merchants. But in order to enforce land sales, vigorous governmental action was imperative. This was not forthcoming, as Jefferson's letter to the assembly in October, 1779, shows: —

It becomes my duty to guard the Assembly against relying in their calculations for any great & immediate supplies from

hence, facts have come to our notice which give great reason to believe that the traverse and other pleadings justly allowed by the law for saving the rights of those who have real or probable appearance of right is perverted to frustrate or delay the effects, by being put in on grounds either frivolous or false and by that means throwing the subject into a course of legal contestation which under the load of business now in the docket of the general court, may not be terminated in the present age, in one instance we are certified by the clerk of the general Court that the estate is claimed by the Steward: tho' this very man undertook to act as Commissioner of the Estate under the sequestration law by our appointment, & has himself personally rendered annual accounts to us of the proceeds of the estate as the estate of a British subject; yet his claim, palpably false as it is, in order to obtain the ceremony of being adjudged so, is to go through all the formalities of regular litigation, before the estate can be exposed to sale. . . . I thought it my duty to guard the General Assembly against any deception in their expectations from these funds.¹

This letter is honorable to Jefferson in that it shows the republican magistrate determined to act with strict legality under all circumstances, but at the same time this fear of taking the initiative, this dependence upon the legislature for vigorous action in war-time had serious drawbacks. The governor could not or would not put pressure on the courts to proceed rapidly with the confiscation cases, and meantime the State went lacking a fund which must come to it eventually and which was badly needed at the moment. Nothing could better show Jefferson's passion for legality and his incapacity for swift and direct means.

The finances of the State were in bad condition. On May 20, 1780, sixteen counties of the sixty-odd had not

¹ Executive communications, 1779.

paid the taxes due in the fall of 1779, and nine others had returned no assessments, but had paid in part, while eight more had neither returned assessments nor paid anything. In other words, thirty-three of the counties — half the State — had failed to meet their obligations, in spite of the fact that the demands made on Virginia for the support of the Northern army were now supplemented by calls to aid the South. So bad was the financial situation that the committee of ways and means of the House of Delegates, on November 27, 1779, proposed radical retrenchment: —

The deranged state of the army, and the ruinous situation of the navy, hath greatly enhanced the expense of maintaining the one, & subtracted from that little defence which was expected to be derived from the other; whilst the accumulated charge of both, creates an article of expenditure which hath already reduced your finances to difficulty, and is too enormous to be supported.

The committee recommended a reduction of the number of ships in the navy, of commands in the army and of officers, without a reduction in the number of privates. Recruiting was to cease and the existing force was to continue at the least possible expense.¹

Jefferson was thus forced to struggle with an economizing legislature if he wished to increase or even save the Virginia military establishment. If he had so struggled and failed, the blame would not have been his, but the assembly's; as a matter of fact, he made no opposition, at least no recorded opposition, to this niggardly and suicidal folly. He either bowed before the assembly's will, or, as is

¹ Executive communications, 1779.

likely, failed to realize the importance of building up the Virginia forces; or, as is possible, he believed that the American armies could not be supported while the local defense was strengthened. If so, he paid a great price for his mistake.

Yet it must be noted in justice to him that he did what he could without taking any action vigorous or aggressive enough to produce genuine results. He worked to raise and equip recruits for the South, now seriously threatened by the British, and also attempted to establish a gun-factory on the James River of a size sufficient to supply the great demand for arms. He proposed to the governors of North and South Carolina to divide the great Cherokee hinterland into three jurisdictions, in order effectually to suppress those troublesome Indians, a much more practical solution of frontier difficulties than the sending of expeditions by the individual States against the whole scattered nation. He wrote to the French minister assuring him that preparation would be made to receive and support a French detachment in Virginia. In a letter to Samuel Huntingdon he enumerated the difficulties of providing an adequate force even for the guarding of the Saratoga prisoners: —

We have hitherto been unable to raise more than about the half of a Battalion of infantry for guarding the Convention Troops at the same Post. The deficiencies have been endeavored to be supplied with Militia. Congress have had too much experience of the radical defects and inconveniences of militia service to need any enumerating them. Our assembly, now sitting, have in contemplation to put the garrison regiment on such a footing as gives us hopes of filling it by the next summer. In the meantime a Battalion which we are raising for our immediate defence may be spared to do garrison duty this winter, and as but a small

part of it is raised as yet, and not probable that it will be completed within any short time, we suppose that with Colo. Taylor's regiment it will not exceed the number required to guard the Troops.¹

Furthermore, Jefferson, on November 30, 1779, anticipated his famous policy of later days by laying an embargo on provisions in order to avoid supplying the enemy and to secure food for the American armies.² This proclamation was in no wise a stretching of the gubernatorial authority, since the governor enjoyed a warrant from the assembly. In a letter to Congress about the same time he laid bare the pressing need of means of defense and apologized for retaining five thousand stands of arms intended for Congress, on the ground that they were sorely needed in Virginia, where the arsenal had no more than three thousand muskets on hand.

From this evidence it is apparent that Virginia was in a serious condition in 1779, both financially and from the point of view of military equipment, and while Jefferson zealously grappled with the great task to which he had been called, we lack in him any urgent realization of the dangers of the situation or knowledge of remedies. His messages to the assembly dealt with details, failing to convey what they should have accurately and forcefully done — an account of the weakness and unpreparedness of the State and proposals for drastic military measures. Jefferson enjoyed great influence with the legislature, which had elected him governor and looked to him for advice, and it probably would have extended his powers to meet the occasion or adopted effective means of raising money and supplies.

¹ *Writings of Jefferson* (Ford), II, 277.

² *Ibid.*, II, 281.

Anyway, he should have pleaded for a stronger policy, and he did not do so.

Not only did the governor fail to understand the State's danger; he also failed to introduce order into the administration. It is true that the colonial system had been slack and that Patrick Henry had done nothing to inaugurate better accounting and administrative methods, but Henry was an orator and Jefferson a man of affairs with a liking for details. Confusion reigned in the government. Accounts were badly kept, taxes went unpaid if pressure were needed to secure payment and were clumsily and expensively collected at best, the currency was hopelessly depreciated, the troops and the navy ate large quantities of provisions and drank hogsheads of taffia without being of much service; an army of commissaries and recruiting officers supported themselves on the State by sheer plunder. Perhaps the evils were too great to be remedied; perhaps Jefferson believed that he lacked the legal right to bring order out of this chaos; at all events, he found out later to his cost that the people hold the executive responsible, however powerless the constitution may have endeavored to make him. It would have been a great, perhaps an impossible, task to provide an adequate defense for the State, but Jefferson seems not to have made the effort. A situation is bad when all men feel it to be so and all men felt the situation to be bad in 1780. For one thing, efficiency in the military department was made impossible by the division of administration among several branches of government — the governor and council, the board of war and the assembly, which last alone had the power to do anything effective. The board of war, although entrusted with important

executive functions, consisted of an unpaid commission of three men. This body, aware of the growing criticism of military management, asked the House of Delegates in December, 1779, for pay and authority. Thereupon the legislature voted the board of war salaries and ordered it to report to the governor, which it had not done formerly. These changes do not seem to have resulted in any improvement, and the board was abolished at the most critical period of 1781. Finally, military affairs were turned over to an ex-line officer, William Davies, who conducted them with much more ability than had been the case before.

Board of war and governor were incapable alike in war administration. It never seems to have occurred to Jefferson that a small, well-drilled force would have been less expensive and also much more useful than militia; certainly he did not suggest the raising of such a body. He complained, indeed, of the difficulty of securing recruits, but made no mention in 1779 of draughting, a power which the assembly had every right to exercise if the governor did not. He seems to have thought no other military system possible except the old one of calling out crowds of the rawest militia when some action was imperative, supplying them with arms, which they usually failed to return, and supporting them by wasteful requisitioning. The militia called out for every alarm devoured quantities of food and rum which would have kept a small force permanently fed and in good-humor.

Jefferson's action in December, 1779, when a rumor of a projected British invasion reached him, explains both his weakness as an executive and the reason for the total surprise he suffered just a year later at the time of Arnold's

descent. Speaking of the rumored raid he wrote to the Speaker of the House: —

It is our duty to provide against every event and the Executive are accordingly engaged in concerting proper means of defence. Among others we think an immediate force from the militia to defend the post at York, and to take a proper post on the South side of James river, but the expence, the difficulties which attend a general call of militia into the field, the disgust it gives them more especially when they find no enemy in place, and the extreme rigor of the season, induce us to refer to the decision of the general assembly, whether we shall on the intelligence already received & now communicated to them, call a competent force of militia to oppose the numbers of the enemy spoken of; or whether we shall make ready all orders & prepare other circumstances, but omit actually issuing these orders till the enemy appear or we have further proof of their intentions? The Assembly will also please to determine whether, in case the enemy should make a lodgment in the country, it would be expedient to avail ourselves of the laudable zeal which may prevail on their first landing and enlist a sufficient number to oppose them & continue in service during the invasion or for any other term. Perhaps it may not be amiss to suggest to the assembly the tardiness of collecting even small numbers of men by divisions, that if any better method should occur to them they may prescribe it. The present state of the Treasury in more points than one, will no doubt be thought an absolute obstacle to every endeavor which may be necessary.¹

Here we have the executive asking the advice of the legislature as to proper war measures; it was a subject on which a body of politicians without military knowledge or experience was not likely to prove illuminating. In April, 1780, he wrote to Washington: —

¹ Ford, II, 289.

The state of the recruiting business in this Country is as follows: There are some draughted soldiers in the different parts of the Country, but they are so far, so disposed, & enlisted for so short a time that we have not thought them worth the expense of gathering up.¹

This defenseless and hopeless condition would have been excusable if inescapable. But in 1779-80, Virginia, while much reduced by the war, still possessed large resources, as the immense damage soon after inflicted by the British showed. There was still much tobacco, flour, and beef in the country, which the legislature, in the absence of money, might have requisitioned and sent to France in payment for arms; the enemy maintained no very effective blockade, and intercourse between Virginia and Europe was fairly safe. Certainly it was suicidal to await events without making the effort to secure men and arms. The fall of Charleston brought the menace of invasion nearer and cost the State her only efficient troops, surrendered with the garrison. The assembly, realizing at last the critical condition of Virginia, passed vigorous acts; the cavalry regiments and the Continental quota were ordered filled by militia draughts, and the governor was given authority to call twenty thousand militia into the field — one half of the available number — in case the State should be invaded. He was also empowered to impress provisions and other articles, to lay an embargo and provide magazines and public stores — in short, his powers were increased to such an extent that efficiency in the government might be hoped for. The assembly exacted still heavier taxes and ground out new emissions of paper money to swell the mass

¹ Ford, II, 301.

of worthless currency. For the encouraging of these efforts Washington sent one of his subordinates, Muhlenberg, from the Continental army. This officer, a man of some energy, exerted himself to collect recruits and is said to have first suggested a conscription law to the Virginia government,¹ which later adopted it. Chesterfield Court-House, the training-camp, soon contained a number of recruits of fairly good quality, though lacking supplies and clothing. The assembly decided to draught three thousand men, who were sorely needed after the fall of Charleston and the loss of the Virginia line.

Jefferson's correspondence through this period shows him to have been hard-working, zealous, and generally sensible, and his eagerness to pay Congressional requisitions was noteworthy. But his strict constitutionalism hampered his whole course. In spite of his enlarged powers, he thought that every measure of importance must have the sanction of the assembly, and the assembly could not be summoned every few weeks in special session in order to legalize his acts. "The time necessary for convening the legislature of such a State," he wrote, "adds to the tardiness of the remedy, and the measure itself is so oppressive on the members as to discourage the attempting it, but in the last emergencies." Untiring and honest as Jefferson was, he lacked the quality of assuming responsibility in a crisis; he needed outside initiative and bolstering up.

Gates's defeat at Camden in September, 1780, came as a heavy blow to the government; the Virginia militia was scattered to the winds with great loss of arms and equipment. The militia exhibited such agility in getting off the

¹ H. A. Muhlenberg's *Life of Major-General Peter Muhlenberg*, 187.

field that few of them, unfortunately, were killed. The Virginia magazine was practically stripped at this time, but Congress stepped into the breach with a loan of three thousand muskets. Shortly after the battle Jefferson wrote to Gates: "We shall exert every nerve to assist you in every way in our power, being as we are without any money in ye Treasury, or any prospect of more till the Assembly meets in Octr." ¹ Under such circumstances a called session might have been advisable, for the danger was pressing. Indeed, the government of Jefferson to be efficient demanded either a continuous session of the assembly, or a very great and definite increase in the governor's authority. A born executive would have demanded or assumed power, but Jefferson could not bring himself to this aggression. His constitutional scruples or a certain indecision of character prevented him.

In the middle of October, 1780, Virginia became a scene of invasion, when a British force landed at Portsmouth and advanced tentatively inland. Muhlenberg, with such recruits as he was able to collect, together with a militia command of about one thousand men under Thomas Nelson, Jr., headed the only defense of the State. The preacher-general, however, by energetic efforts succeeded at last in getting together a tolerably respectable array of several thousand men, sufficiently imposing in size to check the enemy, who appeared reluctant to leave their base very far in the rear. The moral of Muhlenberg's successful levy is that the people of Virginia, despite the disillusioning effects of prolonged war and the government's lack of force and character, were not actually averse from

¹ Ford, II, 333.

military' service and could still be rallied to the standards in considerable numbers by popular and energetic officers, provided they were allowed abundance of time. But it was even more apparent that the Virginia militia could not be got into the field in time to check a quickly conducted raid into the interior. This lesson the British put into practice the following year.

The invader Leslie finally sailed away, giving the State a brief breathing-spell. Breathing-spell it could only be, for the intention of carrying the war into Virginia was so apparent that William Lee, writing from Europe, had warned Jefferson of it. But notwithstanding the fact that a return of the enemy was practically assured and might be looked for at any moment, nothing was done to provide a permanent force of troops; the whole militia gathering was allowed to go home. It must be added, though, that the difficulty of keeping militia in the field more than a few weeks was very great. This was largely due to an absolute want of understanding of war. Men called into the army nowadays go expecting to serve for some time; men in the Revolutionary days went out to shoot their blunderbusses and rifles at the enemy if there chanced to be an enemy and then expected to return home to get in the hay. Having no knowledge of war, they could not understand that it might be well to stay in service and learn something about it. As the militia could only be brought out with difficulty and after some time, and as the government had absolutely nothing else to depend on in case of need, a speedy courier service was essential; it must get intelligence of a raid at the earliest possible hour. This courier service was needed in only one line, from Hampton Roads to Richmond, be-

cause the enemy could not make a sudden descent except by Chesapeake Bay. A partial and imperfect intelligence system had existed earlier, but Jefferson discontinued it, so that the government had no other means of gaining information than what private patriotism might supply. The governor's attention was drawn, in the closing weeks of 1780, to a distant and, under the circumstances, impractical operation — George Rogers Clark's proposed expedition against Detroit. This was designed primarily as a defensive measure for the frontier, but the frontier, while harassed by the Indians, was in nothing like so much danger as the east, where an English army might appear at any moment.

The blow fell at last, taking Jefferson, as might have been expected, quite unawares. He received information that a fleet had been seen off Willoughby Point two days before.¹ The news did not come directly to the governor, but to Thomas Nelson, who intermittently commanded the militia when it was in the field and lived quietly at home in the intervals. Jefferson, uncertain whether the fleet was French or British, procrastinated several days and failed to issue a militia call until January 2, when he got definite intelligence that the ships were hostile. If, as in October, 1780, the British had waited in the vicinity of Norfolk for a week or two and engaged in robbing near-by plantations, — which was probably what Jefferson expected, — there would have been time enough to raise a force of militia and give it a crude organization. But Benedict Arnold, who commanded the detachment, upset all calculations by moving up the James River with such celerity as to reveal the

¹ Ford, II, 392.

utter unpreparedness of Virginia. On January 4, 1781, the enemy neared Richmond, and now that it was too late Jefferson made hurried demands for the militia of whole counties, besides working hard to save the stores in town. He even had a horse fall under him from fatigue. The next day, January 5, the British reached the capital of Virginia, which they plundered for two days; when they had finished, they fell back down the James. Several thousand militia had at length gathered, a force which might have saved Richmond if raised a few days earlier, as Arnold's command was small and composed of inferior troops. The enemy, without meeting molestation, slowly withdrew to Portsmouth, where they encamped. They left behind them not only ruin, but bitter humiliation. Jefferson had, without doubt, done his best, but that was not all that a clear-headed man of action might have done. "For want of intelligence," he wrote, "may be ascribed a great part of, if not the whole of the Enemy's late successful incursions to this place."¹ But, obviously, the government was at fault in not securing the means of gaining intelligence. In war the enemy does not come with letters of introduction.

To provide for the invasion the governor had ordered out militia from twenty-three counties, amounting on paper to nearly five thousand men, though arms were lacking for a large number. Baron Steuben had now superseded Muhlenberg as Continental commander in the State, but this was not an especially fortunate change; the foreign soldier did not understand the peculiarities of the native Virginian and was more of a drillmaster than general or administrator. Arnold had established himself at Portsmouth and was

¹ Ford, II, 417.

always to be feared; fortunately for the Americans, the British commander-in-chief preferred an arrogant, thick-headed regulation officer like Phillips to the brilliant traitor. Notwithstanding the grave danger threatening the State and the chaotic condition of things in Virginia, Jefferson wrote, on January 16, 1781: "It shall be my endeavor to suffer this invasion to divert as little as possible of our Supplies for the Southern Army."¹ This sentiment was eminently patriotic, but not equally practical. Indeed, one of the most trenchant criticisms passed on Jefferson was that he sacrificed the State for the sake of the Southern army, which was so far true that Virginia, after the junction of Arnold and Cornwallis, was in greater immediate danger than the South. The conquest of Virginia in 1781, with her resources, would probably have meant the downfall of the American cause. Overmastering circumstances compelled Jefferson to give first place to home needs, and on January 19 he directed the manager of the lead mines to send all the lead on hand to Richmond instead of one half to the South as he had previously ordered.² Even in the crisis Jefferson the legalist showed forth. The assembly had passed an act for requisitioning food, clothing, and wagons within a certain time limit. This limit had expired when the governor, in disregard, wrote to the leading magistrates in the various counties directing the levying of the requisition in case the supplies had not yet been procured:—

Could any legal scruples arise as to this there would be no doubt that the ensuing Assembly influenced by the necessity that induced them to press the Act would give their Sanction to its Execution though at a later Date than is prescribed. . . . The

¹ Governor's Letter-Book (1781), 26.

² *Ibid.*, 43.

Time of doing this is a Circumstance only and the Principle is sound both in Law and Policy. Substance and Circumstance is to be regarded while we have so many Foes in our bowels and environing us on every Side. He is a bad citizen who can entertain a doubt whether the law will justify him in saving his Country or who will Scruple to risk himself in support of the spirit of a Law where unavoidable Accidents have prevented a literal compliance with it.

So far Jefferson would go in illegality, but no farther. On January 23, 1781, he ordered a meeting of the assembly for March 1, 1781, instead of the date to which it stood adjourned, with an explanation of the critical condition of affairs and the desperate need of money and troops.¹ Some legislative aid, he declared, was necessary for the enforcement of the acts for securing recruits and supplies. Acts upon acts needed to enforce anything do not bespeak a strong administration.

He presently gave another illustration of his dependence on the assembly, which was more commendable in peace than in the midst of a war ever growing more doubtful and dangerous. The State's crying need was a regular military force, and efforts to fill this want, including conscription, had failed, partially because the government would do nothing harsh. A former officer in the Continental line, Alexander Spotswood, now came forward with a plan for raising a mixed command of infantry and cavalry for the State service under Continental regulations. This legion was to be called into the field for an indefinite period for instruction and in case of actual invasion, but should remain at home on furlough when not needed.² The plan might not have worked, but it offered a great advantage over the

¹ Ford, II, 434.

² Executive communications, 1781.

militia system by providing a well-equipped force prepared to remain in service for a considerable length of time, and at least it deserved a trial in the absence of better suggestions. But Jefferson wrote Spotswood: —

I received your favour containing a proposition for raising a Legion for the defence of the State: as there are several parts of it which are beyond the powers of the executive to stipulate I shall do myself the pleasure of laying it before the Genl. Assembly whom we have been obliged to convene on the first of March next.¹

Thus was cold water thrown on a plan which might have furnished the State an organization of some value in the trying times soon to follow. Apparently Jefferson did not understand that a delay of a month or two in war-time may be a serious matter; he could not be unconstitutional in any emergency.

The following weeks were full of labor for him. Greene and Cornwallis steadily moved towards Virginia and it was evident that another and much more serious invasion was imminent. Jefferson made every exertion to strengthen Greene; he summoned the militia in great numbers to join the latter and abandoned conscription for the Continental army in the mean while. The government supplied the levies with necessaries under an act imposing a tax levied in tobacco and provisions. At the same time the militia of the eastern counties was called to Williamsburg to coöperate with the French, who had put in their appearance in Chesapeake Bay. The executive message to the assembly when it met in March, 1781, outlined the situation, but made no pressing recommendations. The legislature quite

¹ Letter-Book (1781), 61.

failed to rise to the need, merely ordering the raising of two legions on Spotswood's plan and creating more paper money. Jefferson, who realized the danger little better than the lawmakers, seems to have been satisfied with this entirely inadequate provision. On March 3, 1781, he showed that he had failed to grasp the situation in a letter he wrote to the North Carolina assembly: —

I assure you that we have been so very far from entertaining an idea of withholding succours from you on account of the invasion of our State that it had been determined that the regular Troops raised & not at that time marched should nevertheless proceed to your assistance & that we would oppose the Army in our own country with militia.¹

This policy, wise enough as long as Greene stood between Virginia and Cornwallis, became highly disadvantageous when Greene elected to march South and leave Virginia to the defense of the militia, which even Jefferson by this time had somewhat lost faith in.

The governor, aware that affairs were anything but right, did not know how to better them. He himself explained to Lafayette the weakness of his government when the latter was ordered to Virginia as the Continental commander there: —

Mild Laws, a People not used to prompt obedience, a want of provisions of War & means of procuring them render our orders often ineffectual, oblige us to temporize & when we cannot accomplish our object in one way to attempt it in another.²

"Oblige us to temporize!" This is a picture of the democratic leader afraid of sternness rather than of the strong executive who uses severe remedies for desperate

¹ Ford, II, 479.

² *Ibid.*, II, 493.

diseases. As a matter of fact, the temper of the people until the beginning of 1781 was generally loyal, and sacrifices were often willingly made. Illustrating this is a statement of Jefferson's, made to Richard Henry Lee in connection with the power of requisitioning horses given a certain quartermaster: —

He applied for militia to aid him in the execution of the powers. We knew that an armed force to impress horses was unnecessary as it was new. The fact has been, that our citizens, so far from requiring an armed force for this purpose, have parted from their horses too easily, by delivering them to every man who said he was riding on public business, and assumed a right of impressing.¹

And several months later, on May 30, 1781, Major John Nelson wrote Jefferson: —

When in Carolina, I did myself the honor to write to you respecting the 4th Troop of Horse which was originally voted to be raised for my Corps, & afterwards disbanded; the Want of Cavalry at present induces me, once more, to request that it may now be recruited; which I will undertake to do in a little Time; as there never was a Period, since the Commencement of the War, that Men might be got with so much Ease.²

The fact seems to be that the Virginia government might have raised a small force for indefinite service despite its straits for money, if it had gone about the thing systematically and energetically.

But the brief calm before the storm of genuine invasion was not utilized for any material strengthening of the defense, which continued to be the old hand-to-mouth, happy-go-lucky method, effective only against a weak and inactive enemy. The custom was to call out a force of militia on the

¹ Ford, II, 495.

² Executive communications, 1781.

news of any movement of the British, supply them with arms and equipment, which were usually carried off at the end of the service and never seen again, pay them at the rate of Continental troops in treasury certificates, feed them by requisitioning provisions, and furnish transportation by impressing wagons and horses. When the enemy relapsed into quiescence, the militia went home and the horses and wagons returned to their owners. Any thought of keeping the militia in the field beyond the need of the moment and until they might become sufficiently trained to be of use for some known military purpose apparently never entered Jefferson's head. The militia system, which was bad enough at best, but defensible on the plea of necessity, was made more ineffective by want of intelligence on the part of the government in handling it. At times when a raid developed into an invasion, requiring the presence of soldiers in the field for a campaign, the levies first called out and becoming somewhat seasoned were discharged and replaced by raw recruits fresh from the plough. "The great length of Time which the Militia had been in the Field," Jefferson wrote on March 31, 1781, "who were first called on induced us in the Discontinuance of the Enterprize against Portsmouth immediately to call so many Militia as . . . with those lately called might make up a proper opposing Force. I state the whole in the Margin who are to be considered as Reliefs to the former Militia."¹ Jefferson fluctuated at this juncture between calling out large portions of the militia of certain counties, or requiring small draughts from the militia of all the counties to form a more permanent body. He should not have hesi-

¹ Letter-Book (1781), 223.

tated a moment; the superior efficiency of even small numbers of men having the character of a regular military force over hosts of militia is one of the commonest lessons of war, and the custom of calling out the militia of various counties in turn for short period service, called "tours of duty," was the worst that could be devised. Yet Jefferson clung to this mode of warfare, writing Muhlenberg, on April 3, 1781: —

The Men under your Command who have been in the field from the beginning of the Invasion, having served a Tour of Duty unusually long, I am anxious to have them satisfied of the Accidents which have as yet prevented their relief. . . . I think myself particularly obliged to acknowledge the patient Service of those who have been so long from Home, and am anxious that they should know that this has not proceeded from any previous Intention of Government, but from the Circumstances before explained.

In spite of this unenlightened attitude of the government, which could not afford to be considerate in such a crisis, Steuben collected a considerable body of militia and conscripts and endeavored with much labor and many robust German oaths to beat them into some kind of shape. They were soon needed, for in the latter part of April, 1781, Phillips and Arnold, ascending the James River, took Petersburg and threatened Richmond. Steuben's imposing show of force along the Henrico Heights, aided by Lafayette's small command of Continentals just arrived, so impressed the British that they fell back down the river without making an attack. The relief was momentary. The full storm of invasion was about to burst on Virginia, for Cornwallis, who had advanced from North Carolina,

marched on Petersburg, where the minor army joined him. The united body then turned towards Richmond, and the assembly adjourned on May 10, 1781, to meet in Charlottesville on May 24. Lafayette, who now commanded in Virginia, was obliged to retreat with his motley force of Continentals and militia before Cornwallis. He continually applied to Jefferson for reinforcements, but the governor could no longer supply them. The latter demanded troops from the counties in vain; the men would not respond. "If the calls on the latter," he wrote Lafayette, "do not produce Sufficient Reinforcements to you I shall candidly acknowledge that it is not in my power to do any Thing more than to represent to the General Assembly that unless they can provide more effectually for the Execution of the Laws it will be vain to call on Militia." ¹

True enough, the temper of the people, under the aggravation of invasion and the helplessness of the government to offer resistance, was becoming dangerous, and in Rockbridge there was a mutiny, which seems to have partly resulted from Jefferson's hesitation to enforce the conscription law. Samuel McDowell, the county-lieutenant, reported to the governor on May 9, 1781: —

The Act of October last, for raising this States quota of troops for the Continental Army, came to this County in due time the Districts were laid off, two or three of the Districts Procured their men for the War, a day was appointed for the Draft, but before the day came, your Excellencys letter allowing a suspension of that Act, in this County, came to hand, and before your Excellencys letter arrived, for taking off that Suspension, the day appointed for the Draft was Past. On Receiving your last letter, Some of the field officers were of opinion that Districts ought to

¹ Ford, III, 38.

be laid off a new, for some reasons; and a Day was appointed to meet to lay them off it was (in consideration) found necessary, the People in this Country, (hearing that they of Augusta had Prevented laying off the Districts there) met (to-wit) almost a hundred of them, and Seeing Colo Bowyer getting the lists from the Capts; of the Strength of their Companies, and Supposing it was to lay off the Districts anew, got into the Court House Seased the table, carried it off in a Riotous manner; and said no Districts should be laid off there, for that they would Serve as militia for three months and make up the Eighteen months that way, but would not be Drafted for Eighteen months and be regulars . . . they tore the Papers and after some time began to go off.¹

Similar outbreaks in other counties, west and east, showed that the spirit of obedience to authority was rapidly weakening throughout Virginia. The people had become more disheartened than at any period of the war and Jefferson's administration had lost all the influence and popularity it once possessed.

Apparently he was conscious that his management had proved a failure. Writing to Washington, on May 28, 1781, shortly before the expiration of his term of office, he said: —

A few days will bring me that relief which the constitution has prepared for those oppressed with the labours of my office and a long declared resolution of relinquishing it to abler hands has prepared my way for retirement to a private station.²

He had been zealous, conscientious, and exceedingly industrious, and so far was the picture of the republican magistrate as he loved to dream it, but still he had not succeeded in the difficult position of war executive, with its demands of clear insight and forcible action, and the weight

¹ Executive communications, 1781.

² Ford, III, 43.

of public opinion was against him. Or, as Jefferson put it in his memoirs: —

From a belief that under the pressure of the invasion under which we were then laboring, the public would have more confidence in a military chief, and that the military commander, being invested with civil power also, both might be wielded with more energy, promptitude and effect for the defence of the State, I resigned the administration at the end of my second year.¹

It was a confession of defeat. Jefferson retired at the height of invasion and in the face of a perfect storm of hostile contention; for the time being his influence was dead. The assembly, driven from Richmond by Cornwallis and from Charlottesville by Tarleton, hastened over the mountains to Staunton, endeavoring to find some way to save the State. The natural and obvious means suggesting itself was to strengthen the powers of the governor at the expense of the constitution, or to appoint a dictator, as some preferred to call it. Jefferson bitterly opposed this plan.

The very thought alone [he wrote] was treason against the people; was treason against mankind in general: as rivetting forever the chains which bow down their necks by giving to their oppressors a proof, which they would have trumpeted through the universe, of the imbecility of republican government, in times of pressing danger, to shield them from harm.²

But the weakness of republican government in a crisis had already been displayed, or, more properly, the weakness of the Virginia constitution, and a temporary dictatorship was rather in the nature of a remedy than of a reversion. Henry was suggested as dictator, along with

¹ Randall, I, 346.

² Ford, III, 234.

Washington and Greene and perhaps others, but the scheme failed. Jefferson states that it "wanted a few votes only of being passed," though the *Journal* shows no record of any kind on the subject. Possibly Jefferson was thinking of the committee of the whole rather than of the official action of the House of Delegates. It was to this dictatorship party that Randall credits the criticisms of Jefferson nearly ending in his impeachment: the biographer would have us believe that these criticisms were designed for the purpose of getting rid of Jefferson and making way for the dictator. Such a statement carries its own refutation. The fact that Virginia had been mercilessly raided by the enemy for a year without being able to make the least retaliation and was now in actual danger of subjugation amply explains the criticisms of the executive; it would have been extraordinary if he had not come in for wholesale condemnation.

To give point and shape to the attack on Mr. Jefferson [Randall goes on to say] to give it popular effect, charges were thrown out against his official conduct, on the floor, at the legislative meeting at Staunton, and an inquiry into his conduct was demanded. George Nicholas, one of the members from Mr. Jefferson's own county, a very honest, but at that time a very young and impulsive man, was the spokesman on this occasion.¹

Nicholas, it should be noted, was not a conservative, but a man of democratic leanings, who later became one of the principal followers of Jefferson and Madison. What could be a stronger proof of the intense dissatisfaction with Jefferson's rule existing at the moment than that such a man should move an investigation? On June 12, 1781, the

¹ Randall, I, 351.

House of Delegates "Resolved, That at the next session of Assembly an inquiry be made into the conduct of the Executive of this State for the last twelve months."¹ This extract from the Journal sounds brief and bald, but it is in reality of high importance. Jefferson then commanded in Virginia something of that idolatrous regard which he later received from the nation as a whole. The vote of censure, therefore, was vastly more significant in his case than it would have been in that of an ordinary official; it was the people turning against their tribune.

This was the low-water mark of Jefferson's career. With his admirers turning against him what might he hope for in the future? For the moment he was saved by a combination of circumstances. Few of the conservatives were present in this House of Delegates of less than sixty members; they were mostly at home in the east where the invasion raged. Again, the pressure of war made a lengthy investigation impossible just then and it was postponed to what was hoped would prove a more leisured season. Besides, Jefferson still had followers who were faithful to the death and they worked for him. Thus, the democratic chieftain escaped the danger immediately threatening him, but with prestige quite gone; for the time being the man who had been revered because he expressed the ideals of his age better than any other man suffered the imputation of lacking ordinary capacity in affairs. On the same day of the investigation motion, June 12, 1781, Jefferson's successor was elected. Randall and Girardin, both writing under Jefferson's inspiration years afterwards when the democrat had fully come into his own, labor to show that he

¹ *Journal*, House of Delegates (May, 1781), 15.

might have been elected governor by the assembly for the third successive year allowed by the constitution if he had so desired — nay, more, that he was actually obliged to persuade delegates to vote against himself in order to obtain a majority for Thomas Nelson. Says Randall: —

Jefferson's friends insisted on reëlecting him. His confidential friends (those who understood his feelings and unalterable determinations) strenuously opposed this on the ground that he had patriotically divested himself of his office to heal divisions in the Legislature, and that he ought to be allowed to carry out his wishes; and that now, accusations having been brought against him and a hearing agreed upon, his honor required him to meet his assailants without the advantage of official position. These considerations induced a considerable body of his friends to vote for General Nelson, and it required their votes, in addition to those of the recent advocates of another man, to elect Mr. Jefferson's candidate over himself.¹

This may be a partially truthful statement of the case, for no man ever inspired deeper devotion than Jefferson, but at best it is highly colored. It seems probable that the governor did not desire reëlection; but it also appears almost certain that he could not have been reëlected if he had. His open candidacy in all likelihood would have brought to a head the threatened investigation of his administration, from which, in the irritated and unjust state of the public mind, he must have emerged with small credit. With his customary adroitness he made the most of a trying situation by declaring that he gave way, or "resigned," as he afterwards expressed it, in favor of a man conversant with military affairs. Nevertheless, Jefferson received some votes in the senate, although Thomas Nelson, Jr., was

¹ Randall, I, 352.

easily elected governor to succeed him. Nelson's election was something in the nature of a revolution; for the first time since the establishment of the Commonwealth a conservative held the chief place. First Patrick Henry, then Jefferson, — and after him his favorites might have been expected to succeed, as later in the presidential succession, but his failure as an executive changed the course of politics. In the emergency the assembly chose an amateur soldier believed to be able to cope with the emergency without regard to his views on the rights of man. That Jefferson should have been replaced by one not his follower is the best evidence of the magnitude of his defeat. The leader retired to one of his farms, thoroughly discredited for the time and no doubt with gloomy thoughts as to the future. Nor was his decline a temporary affair, as the Jeffersonian hero-worshippers maintain. He returned to Congress the fall after and went abroad as a minister for several years, thus cutting loose from Virginia politics while the humiliations the State had endured under his rule remained a matter of fresh remembrance.

The effect of his removal from Virginia was remarkable. The democratic party was for the time being overborne by the conservatives, now under the leadership of Patrick Henry and Richard Henry Lee, who had parted company with Jefferson and abandoned progressive policies. The conservative Benjamin Harrison was elected governor to succeed Nelson, who resigned after Yorktown. Lee and Henry disputed the leadership of the assembly for two years, and then in 1784 joined hands in an attempt to stay the progress of liberalism by establishing state support of religion. The conservative party, which had revived in the

reaction following Jefferson's overthrow, gave the programme hearty support and a most exciting and important political struggle followed. It, indeed, proved to be a turning-point in the history of Virginia. The conservatives failed, beaten by the spirit of the age rather than by the skill of their opponents. Jefferson, whose name was remembered as the first great advocate of social reform, returned from France to find his party more powerful than ever and his own failure as an administrator forgotten.

Strange — the logic of history. Thomas Nelson, Jefferson's successor, proved to be the man for the crisis. He was a commonplace planter of some small military knowledge, much energy and great devotion to duty, and further was not handicapped by any especial veneration for the constitution. Although the assembly at Staunton invested the governor with greatly enlarged powers, including the right to call out the State forces at pleasure, impress everything necessary for military purposes, control the quartermaster's department, banish disaffected persons and constitute special courts, it was felt that Nelson had exceeded his warrant. He had acted with rough vigor, getting into the field a large number of militia, and, what was of more importance, raising subsistence for the French-American army at the siege of Yorktown. Later in the fall, when the surrender of Cornwallis had removed the danger threatening the State, the assembly legalized Nelson's administration, which had plainly been unconstitutional.¹ He had been in effect what some people wanted to make Patrick Henry in 1776 and again in 1781 — a military dictator. He

¹ Hening, x, 478.

had seized supplies and necessities wherever he found them without regard to that constitutional check, the council, which Jefferson had always so scrupulously consulted in his acts; he had, in short, considered nothing but the immediate need of the hour. And he had been successful. On the other hand, Jefferson was associated with the greatest humiliation Virginia has ever known, and Virginians are proud. The State has suffered invasion and on a far greater scale than in 1781, but never again what it suffered then — war without honor. The people grew indignant when they saw a small force of the enemy marching and plundering with absolute impunity, and the government flying from place to place before a troop of cavalry. Nelson had come into power at this time of depression and within a few months led the State forces in person to the glorious victory of Yorktown.

Military reputation is undoubtedly one of the greatest of American political assets. It would not have been wonderful then if Jefferson had fallen into obscurity and lived out his life in retirement and Nelson won lasting accession to office. Just the reverse happened. Nelson resigned the governorship late in 1781 and never appeared in the political field again. Jefferson returned to Virginia, a political prophet of unlimited influence, and it was his predominance in Virginia which afterwards enabled him to become the founder of the Democratic Party and the third President. All his mistakes and disasters were forgotten, only his reforms recalled. He could afford to wait in France, far from his native heath, until the time came for him to return into his own. He had no need to fight his way back to power and popularity, for his earlier career worked for him.

It was not to his activity, not to his political acuteness, not to his services in Washington's government that the great democrat owed his rehabilitation and mastery, but to the "Zeitgeist." He was identified with one of the great movements of the human spirit, and this being so, his past failure, with all its gall, was put out of remembrance. For had he not written: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty and the pursuit of Happiness"?

CHAPTER IX

SPREAD OF DISAFFECTION

WHILE loyalism was conspicuous in the east at the beginning of the war, it hardly made an appearance in the west until the prolongation of the struggle began to try the patience of the people. At first the frontier enthusiastically favored the Revolution and sent a large number of riflemen to swell the patriot forces. But the pressure of war, the interruption of trade, the heavy taxes collected from backwoodsmen unaccustomed to pay taxes, the worthlessness of the currency, and the various Tory influences brought to bear gradually tainted the country bordering on western North Carolina and made some impression on the whole mountain region. In 1775 and 1776 Toryism was practically non-existent in the west, but as 1777 wore away without bringing success to the American arms, the western country began to show the effects of doubt and discouragement. Hamilton's loyalist proclamations, sent out from Detroit all along the frontier, made waverers, and British agents carried the royal oath of allegiance through the back settlements of Virginia and Pennsylvania and found many timid subscribers.

In Augusta William Hinton raised a band of seventy-five men, to whom he administered the British oath.¹ On August 13, 1777, Hinton visited the house of one David Harned with some armed followers and indulged in much

¹ *Virginia Gazette*, October 29, 1777.

treasonable gasconade, declaring "himself in favor of the crown of Great Britain and that General Howe might as well go home with his men, for he could raise men enough to subject the country and that he would do it yet." Militia dispersed Hinton's force and arrested the ringleader, who was wounded in the fray, together with several followers. Augusta court sentenced Martin Cryder, John Cryder, and Hinton, the worst offenders, to fines and prison terms of several years. It appears the court did not enforce these sentences in full, but released the prisoners after a salutary term in jail.¹ The court tried several other cases of disaffection. On September 16, 1777, John Archer was made to take the oath of allegiance and bound to good behavior for a year, for "disaffection to the Commonwealth," and on the following day Alexander Miller, formerly a Presbyterian minister, was fined £100 and sentenced to two years' imprisonment.

About the same time loyalists gathered in some numbers near Cheat River in Monongalia, but were dispersed by a militia force under the command of Zackwell Morgan. After the skirmish the militia wished to hang their prisoners, but were prevented, though the Tory leader Higginson lost his life in a rather obscure way. He was crossing Cheat River as a prisoner in irons under the charge of Morgan and several others, when he either fell out of the boat, or was thrown out, and drowned.² Popular opinion charged Morgan with murder and he was tried; a probably somewhat partial jury acquitted him. In December, 1777, Yohogania court arrested and examined John Campbell,

¹ Augusta Records, I, 509, 528.

² *The Revolution on the Upper Ohio*, 143.

Alexander McKee, and Simon Girty, the noted Indian leader. Girty was discharged; McKee, who had been put on parole as a suspected loyalist, was again paroled. Farther south, in Montgomery, William Preston, county-lieutenant, labored to secure the submission of Captain Thomas Burk, his militia company, and forty others, all of whom refused the Virginia oath of allegiance. Preston complained that the act of May, 1777, directed against the disaffected, carrying penalties of disarmament and loss of civil rights, gave the frontiersmen no concern, since they did not talk treason and so failed to come within the act of 1776 for "punishing certain offenses."

Indeed, the southwest in the summer of 1777 was a greatly disturbed region. Tories from North Carolina and others, it is stated, from eastern Virginia traveled in bands through the mountain settlements, stealing horses and committing robberies and occasionally murder.¹ A few of these Tory outlaws were captured and tried; among them Isaac Sebo, Jeremiah Slaughter, and William Houston, who were convicted of being inimical and suffered confiscation of property and imprisonment. William Campbell, county-lieutenant of Washington, arrested a wayfarer who bore documents in his shoes tending to prove that he was a British emissary sent to stir up the Indians, whereupon the rough-and-ready colonel hanged him on a near-by tree without form of trial.²

Campbell was very active in stamping out disaffection in the southwest, and largely because of his ruthless vigor and energy Toryism failed to develop in that section. The oath

¹ L. P. Summers's *History of Southwest Virginia*, 272.

² *Virginia Magazine of History and Biography*, VII, 120.

of allegiance prescribed by act of assembly was rigorously administered in the west as in other parts of the State, but it meant little, for lawlessness rather than any attachment to the royal cause was the origin of discontent and trouble there. The disturbed conditions inseparable from a state of war, together with the absence of many of the best men of that wild country in the army, gave horse-thieves and counterfeiters an excellent opportunity to ply their trades, and such outlaws were glad to form connections with brother outlaws of loyalist pretensions in North Carolina. Francis Hopkins, a counterfeiter serving a term in jail, escaped and raised a band of brigands, which lived by horse-stealing and highway robbery. Campbell arrested Hopkins one day while he was riding a stolen horse and unceremoniously hanged him on the roadside. After his death his brother, William Hopkins, continued making depredations in Washington County until arrested in 1779. He was sentenced to jail and confiscation of estate "for treasonable practices against the United States of America, in taking up arms under the British standard."¹ Regulators patrolled Washington County, as well as other western counties, for several years and sternly repressed disorder. In neighboring Montgomery County a condition of anarchy existed until militia from Washington suppressed the lawless element.

In the summer of 1779 Tories from the Yadkin River in North Carolina and the New River in Montgomery formed a combination for the purpose, it seems, of attacking the State lead mines in that county. William Preston, the county-lieutenant, unable to cope with the situation, called

¹ Summers, 277.

upon William Campbell, who came to his assistance with a body of Washington militia. This small force overran the disaffected region, quartering itself on Tories, plundering them, and compelling some of them to enlist in the American army or give security for good behavior.¹ The adjacent region in North Carolina received like treatment. Campbell then went on to break up a nest of outlaws in Black Lick Valley in what is now Wythe County; according to accounts he arrested a dozen robbers who had been raiding the settlements and hanged them on two great white oaks known for a century afterwards as the "Tory Trees." Whether Campbell actually executed so large a number of men offhand is doubtful, but that strong means were employed in 1779 to suppress the lawless and discontented element is evident from an act of immunity passed by the assembly in the fall for the benefit of William Campbell, Walter Crockett, and their associates.²

Disaffection had spread widely through western Virginia by 1779. In Augusta a number of prosecutions are recorded; a deposition dated in September, 1779, states that one Robert Craig was a violent Tory.³ The next year James Anderson, a school-teacher, was summoned to court for drinking confusion to Congress; and, more significant still, a writ was returned in April, 1780, marked: "Not executed for fear of the Tories." In Rockingham disaffection was greater. Francis McBride was bound to appear before the November, 1779, grand jury to answer a charge of speaking "words disrespectful to the Government & present Constitution."⁴ Likewise Gerard Erwine

¹ Summers, 292.

² *Ibid.*, 292.

³ Augusta Records, I, 377.

⁴ J. W. Wayland's *History of Rockingham County*, 75.

was bailed to appear in court because he had "propagated some news tending to raise Tumults and Sedition in the State"; and two others were convicted of conspiring with the enemy. The court, on June 9, 1780, examined John Davis on suspicion of treason and "other misdemeanors," sending him on to the general court for trial.¹

The situation became actually dangerous in western Virginia in 1780, with the predominance of the British in the South. The troubled New River was again the principal scene of disturbance, although a larger territory was more or less involved. William Preston appealed for help to Jefferson, then governor, who directed William Campbell to put himself at the head of the Washington and Boteourt militia and take in hand "those Paracides," as the heated governor styled them.² A couple of months later, in September, 1780, Jefferson wrote the President of Congress that disaffection had spread over Washington, Montgomery, Henry, and Bedford, and that many hundreds had actually enlisted to serve the king of England. This statement was exaggerated, but solid reason existed for ill-ease. On October 27, 1780, he wrote the Virginia delegates in Congress: —

A very dangerous Insurrection in Pittsylvania was prevented a few days ago by being discovered three days before it was to take place. The Ringleaders were seized in their Beds. This dangerous fire is only smothered: When it will break out seems to depend altogether on events. It extends from Montgomery County along our Southern boundary to Pittsylvania and eastward as far as the James River. Indeed some suspicions have been raised of its having crept as far as Culpeper.³

¹ Wayland, 81.

² Executive communications, 1780.

³ Ford, II, 356.

The Montgomery outbreak was serious because disaffection there could count on the support of a district in North Carolina where loyalism became actually predominant following the Tory uprising in Surry County in 1780. The lead mines in Montgomery, the point aimed at by the malcontents, were of great importance and a blow at them was a blow at the American cause; but the insurgents were suppressed before they had the chance to do more than threaten. They received rough treatment. Colonel Charles Lynch, superintendent of the lead mines, took the foremost part in terrorizing them, and is said to have given origin to that famous euphemism, "lynch law," by his proceedings on this occasion.¹ It is possible that insurgents were executed without trial; beyond doubt violent and illegal means were used, because the assembly, in October, 1782, passed another immunity act for William Preston, Charles Lynch, and all others engaged in suppressing the conspiracy.² Even after this lesson, in April, 1781, Preston reported that the lead mines were in some danger from the disaffected.³

The whole southern border of Virginia was more or less in a state of disturbance in 1780. Volunteers were in the field from a number of counties, — and apparently in some strength judging from their expenses, — engaged in overawing the conspirators along the Dan River and westwards. Companies of mounted infantry from Montgomery and Washington ranged through the borderland between Virginia and North Carolina, making many arrests; seventy-five offenders were taken under guard to Bedford jail, where they remained about a month. Those arrested were prob-

¹ *Calendar of Virginia State Papers*, III, 190.

² Hening, XI, 134.

³ *Calendar of Virginia State Papers*, II, 36.

ably the most notorious and it is likely that the troops quartered themselves upon less active malcontents and wasted their substance, as had been done the year before. There was also a little bloodshed. Major Joseph Cloyd, of Montgomery, went over the North Carolina line with three companies of mounted volunteers, partly Virginians, partly Carolinians, and attacked a force of Carolina loyalists at Shallow Ford on the Yadkin River, on October 14, 1780. A brisk engagement resulted in the defeat of the Tories with a loss of twenty killed and wounded. This expedition, and the decisive defeat of the Carolina Tories at King's Mountain in September, relieved western Virginia from the danger of becoming the seat of a loyalist uprising in 1780.

Developments in the west were but an acute phase of the dissatisfaction current in Virginia at the time. The ever-growing burdens of the war and the constant calls on militia for field service had largely sapped the real enthusiasm which the generality had shown in 1776. Moreover, the patriot organization, once so strong, had now greatly relaxed. County committees had passed out of existence with the end of the political revolution and the establishment of a permanent government; ordinary governmental machinery replaced the much more acute and efficient Revolutionary tribunals. Expression of Tory opinion seldom met with punishment, and in the tidewater counties correspondence with the enemy seems to have been common. The attitude of the people towards military service constantly became more unwilling; malingering abounded and complaints were frequent and loud.¹ A petition from Caroline County, probably written by Edmund Pendleton,

¹ Legislative Petitions. Charlotte (A3995).

graphically describes the atrocities in that county of secret Tories, who should be more properly denominated malcontents. These continually charged the government with corruption and perfidy, protested against taxes and militia draughts as tyrannical and unconstitutional, refused to give aid in times of danger and belittled the successes and magnified the misfortunes of the American arms.¹ Such murmurings typify the attitude of certain classes of every population called on to undergo a severe and wearisome strain like the Revolutionary War, the classes that value present comfort and welfare more than political principle and are devoid of military enthusiasm at any time. Probably a considerable number of people in every county in the State were of this persuasion in 1780, for the brave and ardent spirits had gone off to join the army and were for the most part dead, and the indifferent or faint-hearted predominated. Such men, of course, were not Tories, but they would bend with the storm and might constitute a distinct danger in a crisis.

But disaffection in the east was not merely passive. The militia draughts, the most onerous imposition of the government, met with open resistance at Northumberland Court-House, near the Potomac, where on September 14 and 15, 1780, a great riot took place and a number of people were killed and wounded. On the second day the local militia which remained faithful succeeded in putting down the rioters, who were tried by court-martial and sentenced in many instances to serve as soldiers for eighteen months or the war. The majority of mutineers who had not been captured surrendered on these terms, but a few boarded

¹ Legislative Petitions. Caroline (A3740).

English vessels in the Bay and escaped.¹ The many instances of growing disloyalty to the American cause brought the government in 1780 to take further measures against offenders. The assembly amended the act "for the punishment of certain offenses" so as to make it a misdemeanor after August 1, 1780, to state by writing, printing, or speech that America ought to be dependent on Great Britain, to acknowledge allegiance to the king, or encourage submission to the British. Prosecution should be made in county courts and penalties were limited to fines of one hundred thousand pounds of tobacco and imprisonment for five years. The act was limited to the duration of the war.²

This law made procedure far more certain and satisfactory than before, but it was supplemented by still more direct measures. An extraordinary act "for giving farther power to the governor and council" put the inhabitants of sections threatened by invasion under a modified martial law. The government received authority to commit suspects to jail or remove them to places of confinement. In case of invasion or insurrection, persons acting as guides or spies for the enemy, giving them aid or intelligence, or dissuading militia from service were to be tried by court-martials of militia officers. Sentences required confirmation by the governor. Most of the trials for disaffection in 1781 were conducted by court-martials, which, under this act, had cognizance of offenses hitherto unnoticed by the law. But in spite of such legislation, the government showed mildness towards the wrongdoers brought to its notice in 1780. The assembly at its October session par-

¹ *Calendar of Virginia State Papers*, I, 534.

² Hening, x, 268.

doned the people of Henry, Bedford, Pittsylvania, Botetourt, Montgomery, and Washington who had taken the king's oath or encouraged enlistments in the British service, but had not committed any criminal acts, provided they swore allegiance to the Commonwealth before the last day of February, 1781. The benefits of this act were extended to a handful of Tories in the public jail at Richmond.

Such leniency may or may not have been misplaced. Certainly Jefferson's government was frequently defied and nothing like the vigorous anti-loyalist spirit that marked the beginning of the Revolution existed in 1781. When the British first seriously assailed Virginia in 1779 and occupied Suffolk, destroying enormous quantities of stores and meeting with no resistance from the ill-prepared militia, they reported that numerous applications of submission were made them by the inhabitants.¹ The spirit of disaffection existing along Chesapeake Bay from the first began to show itself as the war turned against the Americans. British cruisers and privateers swarmed in the Bay, plundered the whole tidewater section, and inflicted immense damage; a British fleet in a single raid in 1779 carried off three hundred slaves along with much other property. Towards the close of the Revolution the State contained an increasing number of passive Tories, secret traitors who would take no overt step, but watched the trend of events intently. The Virginia delegates in Congress wrote home, on April 2, 1781, that a French warship had carried a number of Virginians to Newport, among them traitorous citizens who might injure the cause

¹ *Virginia Historical Register*, iv, 188.

by giving information to the enemy or sowing disaffection.¹ The number of malcontents, already considerable in 1779 and 1780, increased in 1781, with the transfer of hostilities to Virginia soil. The inevitable sufferings of war, which had been great from the first, were now aggravated by the operations of countless commissaries and quartermasters, State and Continental, who plundered right and left, sometimes giving worthless certificates in return for what they took and sometimes not.

A good many Tories were in prison at the beginning of 1781. Even in the pressure of Arnold's invasion, on January 3, 1781, the council examined one of them, Robert B. Carré, who was remanded to jail for the period of the invasion because of disaffection.² On February 1, 1781, when the storm had abated, Jefferson wrote to Governor Lee, of Maryland, in regard to one Joseph Shoemaker, who had been guilty of violence in Virginia and was now under arrest in Baltimore, declaring that the government had no prison in Richmond and suggesting that Shoemaker be tried and executed in Maryland if he were guilty of any crimes in that State. But Lee declined to act as Jefferson's hangman and sent Shoemaker to Richmond, where he was imprisoned in Henrico jail along with other Tories. These latter, to the number of about twenty-five, complained that they had been confined in jail for six months without trial and asked to be examined in any convenient county court or be released on bail pending examination.³ Other complaints came to the government in 1781 from suspects imprisoned elsewhere. Reuben Mitchell, a ship-captain

¹ *Calendar of Virginia State Papers*, II, 4. ² *Council Journal* (1781), 4.

³ *Executive Papers* (December, 1781). Virginia State Library.

confined in Hanover, complained that he had been sixteen days in the provost guard without trial and that he was unable to secure a copy of the charges against him. John Cabeen, a Carolinian who had been arrested in Virginia and thrown into jail at Charlottesville, declared that he was kept chained among a gang of felons and had been given no hearing.

Arnold's raid displayed in striking manner the military weakness of Virginia and the government's utter unpreparedness; it was as discouraging to the patriot population as it was encouraging to the ill-disposed. Discontent with the government became general, while actual disaffection grew widespread. Ordinary suspects could, of course, be clapped into jail and left to cool their heels, but there were insidious forms of treason which it was difficult for the government to combat. The British, with an utter lack of scruple, sought to undermine the patriots by mean intrigue as persistently as they attempted open conquest; they used every weapon and advantage of war, honest and dishonest.

Among their choice tactics was the perversion of flag-of-truce vessels to partisan purposes. The British had sought and obtained leave for flag-of-truce vessels to restore kidnapped slaves and other plunder to their owners in return for supplies. This was, of course, an accommodation both to the plunderers and the plundered, but chiefly to the former, who needed the supplies. After a time the system was so stretched as to make distinctions between the property of persons who had been active in the patriot cause and of those who had remained passive, the latter being restored and the former kept. Finally a flag-of-truce went

so far as to open trade with Mrs. Byrd, of Westover, widow of the distinguished William Byrd, a loyalist, under the pretense of making restitution for captured property. The facts became known, and the council, on February 22, 1781, informed Baron Steuben, who had allowed the British ship to go up the James, of its disapproval of Mrs. Byrd's conduct in receiving goods from the enemy in circumstances amounting to actual barter.¹ Jefferson wrote Mrs. Byrd a few days later that her offense came within the act defining treason and that the attorney-general would proceed against her. The vessel, he said, had been allowed to ascend the river solely to return slaves carried off, instead of which it had begun a regular commerce.² The council directed a warrant to issue to the judges of the general court for the trial of Mrs. Byrd in Richmond on March 15, 1781. But the trial never took place, owing possibly to Mrs. Byrd's sex and rank, possibly to the gravity of the situation in Virginia, which precluded the paying of attention to such comparative trivialities. So this woman escaped the fate of one of Washington's old loves, Mary Philipse, who was attainted of treason. The council, however, forbade flags-of-truce to be used in negotiating the return of plundered property.³

Eastern Virginia was more and more threatened as the year advanced; the defenselessness of the State encouraged Arnold to take position at Portsmouth, while at the same time Cornwallis gradually drew near from the South. But in the southwest, the region where discontent was most acute and dangerous, the situation was improved by the

¹ *Council Journal* (1781), 61. ² *Governor's Letter-Book* (1781), 152.

³ *Council Journal* (1781), 68.

chastisement of the Cherokee Indians, who had begun to make themselves troublesome in December, 1780. The Cherokees were by far the most formidable and dangerous tribe the Southern colonies had to reckon with. Partly civilized and threatened by the growing frontier of Virginia and the Carolinas, the Cherokees listened readily to the British agents and Tories who worked steadily to raise them against the borders. When at last they moved, Virginia and North Carolina militia combined to make a force of respectable size, invaded the Cherokee country, and burned a number of their towns.¹ The Indians prudently allowed the militia to return home unopposed. But though the Cherokee expedition had a good effect on the far frontier, discontent was too prevalent in the west in the spring of 1781 not to show itself.

Garrett Vanmeter, county-lieutenant of Hampshire, wrote to Jefferson, on April 11, 1781, informing him that the agent sent to impress clothes and beef and draught men had been forced by a mob to abandon his work and that peaceful methods had failed to bring the mutineers to obedience. At the same time William Preston reported that he did not think the Montgomery quota of militia demanded for general service could be raised, because nearly half of the militia were disaffected and any attempt to press them into service would either drive them to the mountains or bring on a riot. The Hampshire mutineers, finding a leader, had begun a rather serious disturbance.

A certain John Claypole said if all the men were of his mind, they would not make up any Cloathes, Beef or Men, and all that would join him should turn out. Upon which he got all the men

¹ *Calendar of Virginia State Papers*, I, 435.

present to five or six and Got Liquor and Drank King George the third's health, and Damnation to Congress, upon which complaint was made to three Magistrates. Upon which there was a warrant Issued for several of them, and Guard of fifty men with the Sheriff. When they came to the place they found sixty or seventy men embodied, with arms — after some time they capitulated. The Sheriff served the precept on the said John Claypole, but he refused to come with him or give up his arms; but agreed to come such a time, which time is Past — I was informed there are several Deserters amongst these people, Some of them from the English Prisoners.¹

Jefferson replied that the spirit of mutiny must be crushed, yet counseled Vanmeter that it would perhaps be better not to move against the body of insurgents and drive them into open rebellion, but, on their dispersal, "take them out of their Beds singly and without Noise."² This advice illustrates Jefferson's preference for *finesse* over direct methods. The insurgents, however, instead of dispersing as the governor expected, increased in numbers until they were reported to be a thousand strong. Vanmeter finally sent four companies of militia to break up the gathering, which was easily accomplished and without other casualties than one man accidentally killed. The only fighting of the outbreak took place when insurgents holding a mill fired on a party of horse without effect. Arrests followed the dispersion of the mutineers and the county court immediately examined forty-two prisoners, remanding some of them for trial. The assembly, which was anxious to end the sedition as quickly as possible, authorized the executive to offer a pardon, and the governor accordingly proclaimed it for the benefit of those insurgents

¹ *Calendar of Virginia State Papers*, II, 40.

² Letter-Book (1781).

outlying in the mountains. The council appointed a special court to try the offenders who had been arrested. It met at Hampshire Court-House for the trial, in July, 1781, but as the judges appointed in the order failed to appear, nothing was done. Nevertheless, the threat was an excellent corrective for a turbulent community inclined to regard its own wishes as law. A number of excited women crowded the court-house, anxious to see the prisoners and fearing that they would be sentenced to death and immediately executed.¹ The government was at last showing that there was a limit to its complaisance, something it should have done long before.

No action was taken, but the ringleaders remained in jail. Later on Claypole and several of his associates appealed for an extension to themselves of the act of pardon, as in the case of the southwestern mutineers. Peter Hogg, the Rockingham county-lieutenant, gave the petition his support. The governor replied that he did not have the constitutional power to pardon offenders still in the possession of a court; only the assembly could dismiss prosecutions. At the same time Jefferson admitted that these men suffered hardship in being held for trial while their equally guilty comrades had been pardoned.² Finally the council decided to issue pardons to all the insurgents except John Claypole and four other ringleaders.³ One by one the last of the Hampshire insurgents were taken or surrendered; they claimed to have been misled through ignorance to oppose the taxes and the draught, which was an outworn but effective plea. Eventually even the leaders were pardoned.

¹ *Calendar of Virginia State Papers*, II, 285.

² Letter-Book (1781), 49. ³ *Council Journal* (1781-82), 21.

The Hampshire outbreak was merely symptomatic of the discouragement prevalent in western Virginia and of the resentment caused by war taxes and draughting; what the people endured without murmuring in the Civil War seemed an intolerable burden in the Revolution. The draughts were especially resented and met with frequent resistance. In Augusta and Rockingham the people gathered for the drawings seized the lists and destroyed them. "I don't know where this may stop," wrote Major Thomas Posey, "if there is not a timeous check, in Hanging a few, for examples to the rest."¹ But the government would shed no blood and offered a pardon to the rioters who would return to their duty. The latter thereupon surrendered the ringleaders, William Ward and Lewis Baker. In June, 1781, Augusta court found Ward and Baker guilty of levying war against the Commonwealth and held them for trial by a special committee the council appointed. In Bedford also a number of men combined to defeat the draught. James Calloway, the county-lieutenant, overawed them and imprisoned their leaders in Bedford jail. A court-martial sentenced several of them to serve six months in the army, but they all managed to escape.² Reports from the southwest in June, 1781, stated that parties of Tories and deserters lurked in Montgomery and Washington Counties,³ and in July, William Preston declared that more than half of the Montgomery people were disaffected and that their numbers were growing. Whigs could not be induced to enter militia service for fear of the Tories and Indians.

¹ *Calendar of Virginia State Papers*, II, 107.

² *Council Journal* (1781), 115.

³ *Calendar of Virginia State Papers*, II, 184.

In the east the situation in 1781 was almost as bad. The eastern people suffered as much as the west from taxes and draughts, and, in addition, were exposed to the depredations of the enemy and of quartermasters and other official and unofficial extorters. Indeed, the east offered a better opportunity for resisting the government than the west, for the presence of British troops in the former section during the greater part of the year gave encouragement to every kind of treasonable and seditious practice. There was much malingering, much shirking of duty, much secret intercourse with the enemy and some rioting and plundering, but no party or semblance of a party arose, as in North and South Carolina, to advocate the royal cause. The solidarity of the planter class on the American side remained practically unaffected, even though the evils of war were bringing out the weakness or lack of patriotism of many individuals of that type which all the world over is apt to bow the head to whatever cause happens to have the upper hand for the time being. But such men do not found parties. The records of the year are full of accusations of treason and Toryism; overt acts were not wanting and a handful of men actually made war on their State. Trials followed and many convictions of treason, but in the end mercy invariably triumphed, sometimes at the expense of justice. The government used great moderation in these critical months in dealing with those guilty of treason and disaffection.

There was some excuse for harshness, too. The British commanders, following the inexcusable custom they had introduced in the South, paroled unarmed citizens and threatened them with death if taken in arms against Eng-

land at any subsequent time. Matthews seems to have been the first British commander to employ the system in Virginia; he paroled a number of Nansemond non-combatants in 1779, and Arnold and Cornwallis greatly extended it. As this practice, if systematically carried out and generally regarded, would have left it in the power of a mere raiding party of cavalry permanently to neutralize half a State, Jefferson could not, of course, put up with it. He accordingly required persons who had accepted paroles and intended to observe them to go within the British lines, where they belonged. Such action on his part was imperative; the government could not allow whole sections of the population to become paralyzed by a perversion of military usage.¹

The governor's decision put the inhabitants in the line of march of the British army in a most distressing quandary. Peacefulness was no protection whatever; unarmed planters and small farmers engaged in looking after their affairs and offering no pretense of resistance were forced to give their paroles not to serve in the American army at any time in the future, or were liable to be shipped off to New York to endure the horrors of the British prisons, almost unparalleled in history. On the other hand, if they gave parole and later were called into the field with the militia, they might be executed in case of capture. Jefferson retorted to this threat by threatening to execute an equal number of British prisoners in his hands, and it does not appear that Cornwallis murdered any citizens of Virginia under pretext of breaking parole as he murdered unfortunate Carolinians. Jefferson further attempted to

¹ *Council Journal* (1781), 11.

make paroling difficult by isolating British posts as much as possible. In May, 1781, he asked the assembly to prohibit citizens from going within a certain distance of encampments of the enemy, and to provide a method for the speedy trial of persons caught furnishing the enemy with supplies or acting as guides. This was necessary, he declared, because the military authorities had no power over civilians and could not prevent people from staying in their homes and submitting to the enemy's demands in order to save their property.¹ The assembly thereupon extended the jurisdiction of court-martials over civilians guilty of intercourse with the enemy.

The government had an even more serious embarrassment in the rapidly growing spirit of lawlessness in tide-water Virginia. Jefferson wrote to Colonel Innes in May, 1781, that people in James City and York had committed acts amounting to treason and misprision of treason, although they had covered their tracks so well as to leave no legal proofs. He directed Innes to carry suspects before justices of the peace for ordinary legal investigation and ship them off to Richmond if so ordered by the court, but if evidence was lacking and there seemed danger of rescue simply to seize them without investigation and send them to Henrico jail. A dangerous outbreak against authority occurred on the Eastern Shore in April, 1781. This section, isolated and largely at the mercy of sea power, had always contained many British sympathizers and lukewarm patriots. Besides the necessary burdens of the war, like taxes and militia drawings, the people had suffered from unceasing ravages of privateers and plunderers, who were,

¹ Letter-Book (1781), 31.

for all practical purposes, simply pirates. In addition the government allowed several successive tax levies to pile up on Accomac and Northampton taxpayers without warning, and a militia draught proved the last straw. On April 20, 1781, a mob of several thousand men, armed with clubs and poles, met at Accomac Court-House for the purpose of opposing the draught. George Corbin, the acting county-lieutenant, attempted to quiet the rioters, but, finding his efforts useless, postponed the drawing to a later date. On this occasion the crowd again assembled in force and refused to listen to Corbin's pleading for obedience to the law. Once more the draught was not held.¹

Thereupon confusion reigned on the Eastern Shore. Leading citizens advised their neighbors not to pay taxes; tax collectors refused to make collections or hand over money already received to the commissioners; others were threatened for attempting to collect. Corbin feared to use force to restore order, but the ringleaders in the riot were tried by court-martial and sentenced to serve as soldiers for the duration of the war. The court-martial referred John Curtis and William Garrison, the only men of position among the malcontents, to the council for trial. Corbin vividly described the situation on the Eastern Shore: —

With the enemy's barges continually hovering around over Sea and Bay coasts, threatening to burn and plunder all who should oppose their wicked designs. The disaffected daily increasing by their clandestine trade with the British at Portsmouth, their threats thrown out against all who shall fail to apply for protection and accept the proposed mercy, in the British proclamations, which have been industriously and artfully circulated and enforced.²

¹ *Calendar of Virginia State Papers*, II, 99.

² *Ibid.*, II, 135.

An even more serious occurrence followed this disturbance. The disaffected, who were constantly becoming bolder because unmolested by the distracted government, had taken to robbing remote plantations and attempting to gain the assistance of the slaves. A planter accidentally surprised one of the conspirators while engaged in winning over some negroes and was shot dead. This outrage was too much for the patience of the people; they rose in arms, forced a confession from a slave, and hanged three of the plunderers.¹ The lynching was revenged by a descent on Pungoteague of British barges, commanded by one Robinson and manned chiefly by negroes. A handful of local militia turned out and drove off the raiders after a brief skirmish. The latter took to their boats, followed by the militia, who continued the pursuit up Chesapeake Bay for four days and nights, but without overtaking them. The patriots returned in no complaisant humor and a court-martial proceeded to try John Lyon, rector of St. George's Parish, Accomac, for aiding the enemy and discouraging the militia from taking arms against Robinson's raiders. The case against Lyon looked bad, since he had gone on board Robinson's barge at night, though apparently unwillingly. He received a fair trial, and the sentence of five years' imprisonment imposed was strictly within the law; there could be no doubt of Lyon's open Toryism. Yet the minister bore a good character and was popular with his parishioners, some of whom petitioned the governor for a remission of his sentence to exile. John Cropper, the county-lieutenant, however, reported that Lyon deserved a halter.² Cropper sent the worst offenders in the Accomac

¹ *Calendar of Virginia State Papers*, II, 340, 412.

² *Council Journal* (1781), 250.

outbreak, Lyon, John Curtis, William Garrison, and five others, as prisoners to Richmond, with a recommendation of leniency. The government was mild and changed Lyon's imprisonment to residence in the country twenty miles from Richmond, eventually allowing him to return to Accomac.

The whole tidewater section was becoming distracted, a prey to raiders all along the shores of rivers and bays, honeycombed with intrigue and full of secret traitors, who were too few in number in any one place or too fearful of public sentiment to act openly. The New York privateers in Chesapeake waters paid no attention to the political views of their victims, robbing good loyalists as willingly as rebels. Ralph Wormeley and Philip Grymes were among the former class. Wormeley's splendid estate at Rosegill was plundered by privateersmen, who found guides and assistants in the plantation negroes. Wormeley and other sufferers from this raid appealed to Leslie, commanding the British force at Portsmouth, to control his privateers, and Leslie returned some slaves and other stolen property.¹ The privateersmen on the British side were difficult to restrain, for they were pirates in everything but name; they used New York as a refuge and the Union Jack as a cover for indiscriminate robbery and outrage. They were for the most part Americans, chiefly from New York, but also from Maryland and Virginia — fishermen, coast sailors, marine vagrants, who seized the unrivaled opportunity for crime offered by Chesapeake Bay and its numberless inlets. In the early years of the war the Virginia navy had kept these water-thieves in check, but

¹ *Calendar of Virginia State Papers*, II, 405.

the navy came to an end in the invasion at the beginning of 1781, and the pirates enjoyed full scope. Conditions in tidewater Virginia had become distressing by the summer of that year and continued so throughout 1782.

Constant arrests and trials in 1781 showed the extent of disaffection and the deep public discouragement. Local militia commanders, invested with the powers of martial law, strove to suppress the discontented whom the ubiquitous and energetic county committees had once so effectually terrorized. Cases of disaffection were numerous. Archibald Ritchie, of Tappahannock, the loyalist, happening to send a letter by the same messenger used by a privateer captain in Tappahannock jail, had his papers seized and sealed.¹ Fauntleroy Dye, an ex-tobacco-inspector of Richmond County, had fallen into the hands of the enemy in 1779 and returned home somewhat later with a considerable sum of money, which naturally excited suspicion in the community. Dye, who had become thoroughly tainted during his captivity, began to use his influence to persuade his neighbors to resist militia calls and to hold private meetings of a doubtful character at his house. Learning this, Major Joel, with a party of mounted volunteers, went into Richmond, arrested one Tiffie, "a most notorious promoter of sedition," and surrounded Dye's house, where he took a few armed Tories, who had "in open contempt of the laws of their country, bid defiance to the county lieutenant, and held constant meetings of the disaffected."² A court-martial at Leedstown found Dye guilty of giving intelligence to the enemy and encouraging

¹ *Council Journal* (1781), 359.

² *Calendar of Virginia State Papers*, II, 155.

desertion, and sentenced him to prison for the period of the war.

Caution was necessary to escape suspicion in the summer of 1781, so general were the reports of disaffection. Because of communications carried on with the British at Portsmouth for the return of property taken by privatersmen, which led to suspicions of a widespread system of intelligence among loyalists, the government ordered the local authorities to arrest a number of persons along the Rappahannock and seize their papers: Ralph Wormeley, Jr., Philip Grymes, and about twenty others, some of them prominent merchants. These arrests had little effect in stemming the tide of discontent ever strengthening through the year. Amos Weeks reported from Princess Anne that there were many disaffected in the county, whom he wished to bring to justice. Thomas Newton confirmed his account: —

The County of Princess Anne has neither civil or military law in it — they are striving to collect their militia — to-morrow will determine their numbers to turn out — murder is committed and no notice taken of it for want of some support up the Country — a few desperate fellows go about in the sea Coasts and large Swamps and do mischief in the nights. Every one who appears active against them is the object of their fury.¹

Other counties in the neighborhood were as bad. With the British established at Portsmouth and sending out detachments into the surrounding country to build posts, the natural Toryism of southeastern Virginia reappeared. Josiah Parker, the militia commander in Isle of Wight, reported that some there visited the enemy and that many

¹ *Calendar of Virginia State Papers*, II, 451.

Norfolk, Princess Anne, and Nansemond people had been paroled by the British on their own request, although only twelve men in Nansemond had actually taken arms with them. Feeling ran so high between Tories and patriots in this region that violence followed; how much it is hard to say; the records speak vaguely of murder as being common, but specific instances are not so easy to find. One revolting crime is recorded. A militia captain named Nott, in scouting through Nansemond, fell into an ambush set by some local Tories and was mortally wounded. The ambushers put him in a cart and were on their way to the nearest British post when a squad of American dragoons fell upon them, retook the dying man, and captured the leader of the party, Dempsey Butler, a deserter from the militia and all-round bad character.¹ Farther up the coast, in Gloucester, Sir John Peyton expressed a belief that the enemy were in communication with Gwynn's Island and Middlesex and that the people were generally inclined towards Toryism. Constant accusations of treason came to the council and many prisoners, some innocent, some unquestionably guilty. Benjamin Bronson and Warwood Burt, of York, were bailed to appear before the council on the charge of treason, and John Warden, against whom information had been lodged, gave bond of twenty thousand pounds of tobacco to appear.² On October 12, 1781, during the siege of Yorktown, the council dismissed a number of suspects on their expressing contrition and giving security to furnish each a soldier for the war.

What was in some respects the most remarkable trial

¹ *Calendar of Virginia State Papers*, II, 189.

² *Council Journal* (1781), 212.

case of Toryism during the Revolution was that of "Billy," a mulatto slave tried and condemned to death by Prince William court in May, 1781, "for aiding and abetting and feloniously and traitorously waging and levying war against the Commonwealth, in conjunction with divers of the same, in an armed vessel."¹ Two of the judges dissented on the ground that a slave, not being a citizen of the State, owed it no allegiance and so could not commit treason. This was a new doctrine, fruit of Revolutionary humanitarianism. Slaves had been tried and executed for treason in the colonial period; a notable case had occurred in 1710, and a slave was executed for robbery and treason in Norfolk in 1778. Mann Page, the executor of the estate owning "Billy," appealed to Jefferson for a reprieve, which was granted, and later petitioned the legislature for his pardon, on the ground that his conviction of treason was illegal.² The committee appointed to consider the appeal concurred, and it is probable that the slave was pardoned, though the end of the case is obscure.

So far-reaching had been disaffection in Virginia that the public jail at the end of November, 1781, was filled to its utmost capacity with persons awaiting trial for political offenses. William Rose, the keeper, reported that seven men had been committed to jail on the governor's order, but that it would be impossible to keep them in so confined a space, along with the number already in prison, without endangering their lives, whereupon they were released on bail. On December 4, 1781, thirty-two loyalists captured at Yorktown and elsewhere were in the Richmond jail,

¹ *Calendar of Virginia State Papers*, II, 90.

² *Journal*, House of Delegates (May, 1781), 11.

besides other prisoners. This overcrowding in a small confine led the council to take measures for a jail delivery. The governor reported that the prisoners were so closely quartered that their lives were actually in danger and the council discharged them.

It could afford to be magnanimous. The war was over in effect; the peril past. But that dangerous discontent and open treason were progressing in 1781 to the point of threatening the activities of the government in waging the war cannot be doubted. There was no semblance of a Tory party, but everywhere were doubt, dissatisfaction, and a disinclination to make sacrifices. The victory of Yorktown rescued Virginia from a serious situation.

CHAPTER X

MILITARY OPERATIONS

THE later military movements in Virginia have been so frequently described and in such detail that a further prolonged study would be superfluous; yet a general account of the operations of the war cannot well be excluded from any broad narrative of the Revolution. After Dunmore's expulsion the offensive operations of the Virginia government ended. Its military activities were confined to furnishing supplies and troops for the Continental army, and it made little effort to provide for home defense. Militia organization actually became less efficient as the war progressed. There was need, too, for a mobile and trained militia. Virginia was not invaded for several years, but the Chesapeake was terribly raided by privateers through the entire contest and the Indians were always threatening and occasionally dangerous.

The Indian menace seemed great for a moment in 1776, when both the Creeks and Cherokees were carrying on hostilities against the borders of the Southern colonies. The arrival of a British force at this moment would have made the red men's assistance valuable; the British did not come and the Americans were able to put down the Indians. South Carolina roughly suppressed the Creeks, and the three Southern colonies then turned in concert against the Cherokees who were raiding Virginia as far as the Blue Ridge. Virginia sent out an expedition under Colonel Isaac Christian which traversed the wilderness far

into the present State of Tennessee and endured extraordinary hardships. It met with no resistance, however, as the Cherokees were awed by the size of the force, and, after witnessing the destruction of some of their towns, sued for peace. Christian's raid made such an impression on these savages that they remained comparatively quiet for the rest of the war.

The English, absorbed in their efforts to conquer the North, had allowed their allies to be subdued without assistance. And so long as the towns of Philadelphia and New York and the line of the Hudson remained the British objective, little heed was paid to the South. It was only after Burgoyne had surrendered at Saratoga and Howe had evacuated Philadelphia that the new commander-in-chief, Sir Henry Clinton, began to meditate an attack on the prosperous and undefended South. Sooner or later a Southern war would lead to an invasion of Virginia, the chief Southern State and the natural base of supplies for armies operating in the Carolinas. The British harassed the Commonwealth with several severe raids before making it the scene of regular campaigns. Command of the sea gave them the option of selecting any point along the coast for attack, and no country could be more inviting to water expeditions than Virginia, with its deeply indented shore and its numerous broad rivers. In the realization of these facts, Clinton sent an expedition from New York in May, 1779, under Admiral Sir George Collier.¹ The fleet anchored in Hampton Roads on May 9, and Collier, with Matthews, who commanded the troops on board, lost little time in attacking Portsmouth, where the patriots

¹ Campbell's *History of Virginia*, 696.

had built a stout log-work on the Elizabeth River dignified by the name of Fort Nelson. With usual colonial fatuousness in military matters, they had left it open in the rear, so that the British by landing troops behind it exposed the Americans to attack. The garrison precipitately retreated and the enemy occupied Portsmouth without fighting. From this point as a center they sent out raiding parties in various directions, one of which captured Suffolk, the chief *dépôt* of military supplies in Virginia. Apparently the State government selected this exposed town in the belief that Virginia enjoyed immunity from British attempts. A militia force of two thousand had gathered at Suffolk, but it dispersed on the approach of the redcoats. Naval stores in large quantity and thousands of barrels of pork were destroyed, and then the expedition returned to New York.

The rulers at Williamsburg had made a hasty attempt to meet the raid by calling out militia and holding two thousand recruits about to be sent to the Continental army. When Collier abandoned Portsmouth, they were sufficiently reassured to forward the recruits to South Carolina along with two troops of horse. The assembly passed a totally ineffective act for raising forty-five hundred volunteers by way of salving its conscience and gave the question little further thought. It did go so far, however, as to ask for a detachment of the French fleet to guard the unprotected Chesapeake waters. If this request had been granted, the State would have escaped losses from privateers and organized raids like Collier's which finally came to endanger the American cause. But the French fleet was kept at Newport, where it accomplished

nothing, while Virginia was left open to assaults by forces of any size.

In October, 1780, a British expedition of three thousand men commanded by General Leslie landed at Portsmouth. Leslie was not primarily engaged in raiding, but in establishing communication with Cornwallis in the Carolinas, and his ravages were not widespread. After a stay of about a month at Portsmouth and Suffolk, he sailed for South Carolina to reinforce Cornwallis. Militia in considerable numbers had gathered to oppose him, but according to the customary hand-to-mouth method of the Virginia government it dispersed on the disappearance of the immediate danger. Collier's and Leslie's unopposed occupation of Virginia ports prepared the way for a much more serious enterprise; the State's evident helplessness encouraged the British to push raids into the interior. Clinton chose Benedict Arnold to command the next expedition, which entered the Virginia Capes on December 30, 1780.

Instead of stopping at Portsmouth as the British commanders had done previously, Arnold boldly stood up the James with his force of sixteen hundred men. There was no army to oppose him; the patriots had thrown up earthworks at points along the river, and the cannon at one of these, Hood's, fired on the flotilla, but this feeble resistance ended when Arnold landed troops. The traitor reached Richmond on January 5, 1781. When he had destroyed the military stores and the public buildings at the new Virginia capital, he fell back down the James. One detachment of the expedition, in attempting to ascend the Appomattox to Petersburg, was so vigorously opposed by General Smallwood with a body of militia that it gave up

the enterprise. Simcoe's cavalry surprised and dispersed a handful of militia at Charles City Court-House. Arnold was ambushed at Hood's on his way down the river by George Rogers Clark, the Western hero, and suffered a slight loss. All in all, however, this small British expedition met with no opposition worthy of the name.

Arnold established himself at Portsmouth on January 20, 1781. He had come for no flying visit, but for systematic raiding; a reinforcement of two thousand men made him formidable. By this time the Virginia government had managed to bring four thousand militia into the field, part of the force on the Rappahannock under Weedon, part under Thomas Nelson, Jr., at Williamsburg, and part under Baron Steuben at Cabin Point on the James.¹ There was some prospect of assistance, too, since the presence of Arnold had called the attention of Washington and the French to the Virginia campaign. Desire to capture the traitor, as well as the necessity of preventing the destruction of the State's resources, led to a resolution to send a French fleet to the Chesapeake as a part of a joint military and naval movement. Lafayette was ordered to the head of the Bay with a detachment of the Continental army to be employed in the attempt. The plan of coöperation failed, owing largely to the blundering of the French. A squadron commanded by De Tilly entered Hampton Roads, but because of its small size the commander feared that he would be bottled up by the British fleet. Without attempting any maneuvers, he sailed back to the French base of operations, Newport, Rhode Island.²

¹ F. R. Lassiter's *Arnold's Invasion of Virginia*, 16.

² Charlemagne Tower's *The Marquis de La Fayette in the American Revolution*, II, 224-25.

All the same, the opportunity to capture Arnold was too tempting to be lost. The French admiral Destouches brought a second and larger fleet to Virginia with eleven hundred troops on board, commanded by Baron Vioménil, Rochambeau's second in command. Destouches's tardy movements frustrated the plan. The British admiral Arbuthnot reached the Capes ahead of the French and an action between the two fleets resulted in the latter's return to Newport for a second time.

This failure was attended with serious consequences. The militia had assembled in sufficient numbers to be of some service in a joint attack on Portsmouth with the French and Lafayette's Continentals. Colonel Parker was at Suffolk with the Nansemond militia and Lawson at Smithfield with nine hundred infantry and a troop of horse. Muhlenberg occupied Cabin Point with eight hundred infantry and Armand's cavalry legion. On the north side of the James, Nelson had gathered one thousand men. Muhlenberg, who commanded all these forces, aimed to prevent Arnold from escaping south to join Cornwallis by acting in concert with the North Carolina militia, and he might have succeeded if the French had held command of the sea. As it was, the English were reinforced after Destouches's *débâcle*, and the American plan of campaign completely broke down. Instead of taking the offensive against the English, the patriots were not even able to offer a successful defense to a new invasion projected from Portsmouth. The British fleet had brought further troops and another commander, Major-General Phillips. Phillips was a rare specimen of that insolent, overbearing military type which had done so much to prejudice the colonies

against English rule. He was an officer of small ability, but as Virginia unassisted could make but little opposition, he accomplished his object, which was to plunder the country.

In the middle of April, 1781, Phillips went up the James River with the best part of his command. The James, which divides Virginia into unequal halves, was the main commercial highway and strategic line of the State. The chief towns were on it or near it, and the largest tobacco warehouses; to hold it was to control the greater part of eastern Virginia. Naturally, then, it was the center of operations for the campaign of 1781, both for Phillips's raid and the more serious movements of Cornwallis later in the year. Phillips turned aside to occupy Williamsburg and then proceeded up the Appomattox. Muhlenberg, with his militia, made some opposition to the British, who entered Petersburg on April 25, 1781, only after a lively brush.¹ The invaders created havoc, burning warehouses at Petersburg and Warwick and the military supply *dépôt* at Chesterfield Court-House.

The main British objective was Richmond, where a quantity of stores again had been collected. Baron Steuben was now commanding in Virginia instead of Muhlenberg; he had only a handful of regulars and a small force of militia, but he made such resistance as was possible and succeeded in delaying the enemy's advance. Time was of importance, for Lafayette was rapidly drawing near with his Continentals. Though he had been ordered to Virginia originally for the attack on Portsmouth, which proved abortive, he arrived in season to be of great service in the

¹ Tower, II, 292.

defensive campaign now really beginning. The British reached Manchester on the south bank of the James opposite Richmond on April 29, just as Lafayette entered the latter place from the north.¹ Phillips had the larger and better force, amounting to twenty-three hundred men, but the crossing of the river under fire was a somewhat hazardous operation and the English general allowed discretion to cool his ardor. He retired down the James to Westover after a raid of exceptional severity, in which Virginia suffered material injury. Lafayette followed along the north bank of the river, too weak to attack, but strong enough to oppose any attempt to cross. His presence was of importance, for it made impossible any wide dispersal of the British force for plundering.

Phillips, who was ailing, returned to Petersburg and died on May 13; Arnold succeeded him in command. The generalissimo in the South, Lord Cornwallis, was advancing from North Carolina to join Arnold and inaugurate a campaign in Virginia. Lafayette, though he longed to prevent the junction, could do nothing with his few troops. He wrote to hasten the movements of Anthony Wayne, detached with a further force of Continentals to aid him, and passed over the James towards Petersburg. The rival artillery carried on a cannonade across the Appomattox, but the Frenchman was in such a dangerous position with the broad James in his rear that he speedily returned to Richmond. He still hoped to be able to attack Arnold before the arrival of Cornwallis; he did not know that the latter had reached Petersburg before Wayne had set out from York, Pennsylvania, on the march southward.

¹ Tower, II, 293.

The situation of the patriots was now very threatening. Nathanael Greene, the American commander in the Carolinas, had refused to follow Cornwallis into Virginia and had taken the fateful step of marching South; the Old Dominion was left to such defense as might be devised. Cornwallis commanded a considerable and well-appointed army, especially strong in cavalry, while the only American force in the State of any consequence was Lafayette's small detachment of Continentals augmented by militia. The English general began his movements by advancing to the James, which he crossed at Westover. He reached Bottom's Bridge on the Chickahominy on May 28;¹ Lafayette left Richmond on May 27, with the British near at hand.² He was in no little danger; the enemy by an energetic use of their cavalry might have held him until the main force could come up. The marquis, appreciating his position, began a rapid retreat northward to join Wayne, who was now known to be somewhere near at hand. Cornwallis wheeled in pursuit and paralleled the American line of march for several days, endeavoring to intervene between Lafayette and Wayne and bring the former to battle. On May 28, Lafayette crossed the South Anna and on May 30 crossed the North Anna and was safe. On June 10, Wayne met him on the Rapidan, with one thousand Continentals of the Pennsylvania line.

Cornwallis had given up the pursuit on June 1 and turned his attention elsewhere. He sent Tarleton on a cavalry raid to Charlottesville, whither the Virginia assembly had fled, and Simcoe to Point of Fork on the upper James, where the Virginians had assembled large military stores. Tarleton

¹ Tower, II, 320.

² *Ibid.*, II, 321.

drove the assembly over the mountains to Staunton, but had no other success; Simcoe succeeded in frightening off Steuben, who guarded Point of Fork, and burned the stores. This was a serious loss for the bankrupt Virginia government. Meanwhile the American army, which had been increased by Wayne to about four thousand men, was now strong enough to play with the offensive. Lafayette was no longer in danger from a cavalry attack and might even offer battle, provided he had exceptional advantages. At least, he could prevent further British raids of any consequence; Cornwallis must keep his troops well in hand in the face of a formidable foe quite able to cut off detachments. Cornwallis fell back to the James River west of Richmond as Lafayette in turn advanced; on the latter's approach he turned eastward and passed through Richmond to Williamsburg. Lafayette followed,¹ at first cautiously, but gradually with more boldness. Steuben joined him on June 19 with a militia array, raising his army to five thousand men, of whom two thousand were Continentals. It was too heterogeneous and badly equipped an army, however, to be lightly risked in battle, though as a check and impediment on Cornwallis's movements it was invaluable. The conquest of Virginia was impossible as long as it existed.

Lafayette's vigorous pursuit brought on several severe skirmishes with the British rear-guard. On one occasion Muhlenberg in the American van was set upon by Tarleton, but Lafayette threw his supports briskly forward and the dragoons retired. Anthony Wayne, who commanded the patriot advance, continued to press the British closely,

¹ Tower, II, 342.

fighting a skirmish at Spencer's Ordinary on June 26. On June 28, Cornwallis reached Williamsburg, where orders from Clinton met him. He was directed to send back part of his army to New York for Clinton's reinforcement and to take up a defensive position with the remainder. He thereupon moved south with the intention of going to Portsmouth; by sending his baggage across the James in advance of his troops he beguiled the Americans into believing that his army had already passed over. Intent on cutting off the rear-guard, Wayne pressed forward across a long causeway through the swamps which line the river near Jamestown. Cornwallis remained *perdu* until Wayne entered the trap and then confronted him with the whole British army drawn up for battle. For a moment Wayne's danger was very great. His force doubtless would have been overwhelmed, if Lafayette, on reaching the scene of action, had not promptly brought up supports, which were fortunately near at hand. Two battalions of Pennsylvanians created a diversion by charging the British center, thus giving Wayne the chance to withdraw. The affair at Green Spring was a sharply contested engagement, from which the Americans were exceedingly fortunate to escape without heavy loss. Tarleton later accused Cornwallis of sluggishness in not following up his advantage the next morning, and it does seem that the English general let pass an opportunity to dispose of Lafayette and bring his Virginia venture to a successful pause.

As it was, the campaign had been a failure in a strategic sense, though Virginia's economic resources had suffered greatly. Cornwallis established himself at Portsmouth, while Tarleton went off on a brief plundering excursion

through southern Virginia more productive of outrages on the inhabitants than of injury to the American cause. Lafayette, with an army still intact and growing, took up a position at Malvern Hill, later famous for the battle fought there in 1862. Virginia could not be called conquered as long as a considerable American force still held the field; the State was weakened by a summer of marching and burning, but its resources were yet large. After a month of constant maneuvering Cornwallis had failed to bring on a battle and now held only the country at the mouth of the James. Indeed, the campaign, with the subsequent surrender, has drawn much hostile criticism on Cornwallis. That he was not a great strategist is true, but he was a competent tactician, and he gave the Americans more trouble than any British general. He organized a disciplined and mobile army with which he marched vast distances and fought a number of engagements, nearly always with success. His invasion of Virginia was inevitable if the British wished to secure their conquests in the South; the patriots in the Carolinas could always count on aid from Virginia, which was sometimes of prime value, as in the King's Mountain expedition. The occupation of Virginia would mean the subjection of North and South Carolina, as well as the possession of an excellent base for an attack on Maryland and Delaware. There were many possibilities involved, and the chief blame for the British downfall should rest with Clinton, who sought to control New York and the South simultaneously with a force entirely too small once the French appeared in the field. The policy of sending out expeditions from New York to attack distant points was feasible only as long as the British

held undisputed control of the sea. Loss of sea command would mean the exposure of some outlying detachment to a French-American concentration of overpowering size, and this was what occurred. Cornwallis happened to command the smallest and most vulnerable detachment and the blow fell on him.

The moment was an anxious one for the French and American commanders; the play was theirs, but the selection of the proper move was not so easy to determine. Washington had long cherished the idea of an attack on New York, but he now reluctantly abandoned this design. New York was difficult to approach from the sea and was heavily fortified and well garrisoned. He therefore turned towards Cornwallis, who held an exposed position on Chesapeake Bay far from the British bases at New York and Charleston. But a movement against Cornwallis would necessitate the coöperation of the main French fleet, then lying off Haiti, with the French-American army on the Hudson, and furthermore the quiescence of Cornwallis himself, who could fall back on Wilmington unless cut off by a land force.

De Grasse, the French admiral in the West Indies, agreed to coöperate and sailed from Haiti to the Chesapeake with twenty-eight ships of the line and a large body of troops. In the mean time Cornwallis had moved from Portsmouth to Yorktown on the York-James Peninsula, which he considered more accessible to the sea. Lafayette remained at Malvern Hill until Cornwallis's movement to Yorktown caused him to break up camp and advance to the Pamunkey River. De Grasse sailed through the Capes on August 30. By this time Washington was on his way to

Virginia, but still distant, and Lafayette was close at hand, but not actually present. It would seem, then, that Cornwallis erred in not attacking the French troops when De Grasse landed them at Jamestown, for his force was much superior. He did consider an attack after the French had joined Lafayette at Williamsburg, but found the venture too risky.

His fate was quickly sealed by the French naval superiority. On September 5, the British admiral Graves reached the Capes with a fleet not much smaller than the French. De Grasse at once put out to sea to meet him, and an indecisive engagement followed, resulting in the crippling of several English vessels. During the action a small French fleet from Newport slipped into Hampton Roads, and when the French and English ships returned to the Chesapeake, Graves found the balance of odds against him; he therefore returned to New York, leaving Cornwallis unrelieved.

But the latter had excellent chances of escape so long as he was blockaded on the land side by no more considerable a force than Lafayette's. His end drew near when Washington arrived at Williamsburg, on September 14, and the allied army landed from the transports which had brought them from the Elk River at the head of Chesapeake Bay. On September 28, Washington moved to the vicinity of Yorktown and the trap had definitely closed on Cornwallis. The Englishman had counted on British sea power until it became too late to escape from the peninsula. The movement against Cornwallis was one of the most brilliant strategical combinations of the eighteenth century. Any one of a number of accidents might have frustrated the plan. If the English fleet had held the sea against De

Grasse, Cornwallis would have received succor; if Cornwallis had scented the danger and retreated south, the campaign would have ended fruitlessly. As it was, the coöperation between fleet and army was excellently timed in spite of the immense distances to be covered and the many possible interruptions, such as a sally by Clinton from New York.

With the allied army in position before Yorktown, the surrender was a question of time. There was intrenching to be done and siege cannon to be mounted and redoubts to be taken at the point of the bayonet, but these things were parts of the inevitable military performance preceding a surrender in those days. Cornwallis finally threw up the sponge on October 19, 1781. The war thus closed in reality on Virginia soil. The campaign had proved a critical one, and the French fleet and army were the decisive factors. Owing to the numerical inferiority of the British in the various fields of the war, the loss of this small army, which would not have been greatly felt under ordinary circumstances, secured the independence of America. The Whig Party, now in power in England, would no longer support a struggle which it had always opposed and which it looked on as a hopeless effort to bring back an irreconcilable part of the empire.

CHAPTER XI

END OF THE WAR

WHEN the British arms in Virginia collapsed in October, 1781, desire of revenge rose high in the triumphant patriots. This was a natural if not laudable feeling. From Camden to Yorktown was by far the darkest year of the war in the South and the long-suppressed Tories began to raise their heads in Virginia. The real loyalists were few in comparison, however, with the time-servers who remained passively resistant to the government or carried on correspondence with the enemy and sold supplies at British posts, and with the genuinely criminal, who seized the opportunity for counterfeiting and horse-stealing afforded by the British invasion. The patriot populace along the coast had suffered greatly from privateers and Tory freebooters, and in the Norfolk district a condition resembling civil war existed. Robbery and other outrages were perpetrated, apparently by both sides, but as the lawless and discontented element was Tory simply because the government that afflicted it with taxes and enforced military service was Whig, most of the violence proceeded from so-called loyalists. Open opposition to the government continued around Norfolk until the end of the war and the day of reckoning.

Local patriot leaders recommended strong measures. Colonel Thomas Newton wrote from Surry: —

The Tories and Refugees below are still unpunished, to the great dissatisfaction of the well affected. Many of them were in

arms plundering and now live in affluence while those who were engaged in their Country's service are ruin'd. I would not wish to persecute, but if some examples are not made, the encouragement is too great for many to withstand the temptation. Too many of the justices below were of the party to bring delinquents to account, but I hope some steps will be taken, to call the whole to trial by impartial men. It is really horrid to think that a man (one of our best soldiers) shou'd be taken out of a justice's house and murder'd, the justice knowing the persons and they never called to account for it. This matter has caused several other murders, as the friends revenge the death of their relations and acquaintances on both sides.¹

In some places the Tories were rather roughly put down. Colonel Wishart reported from Princess Anne: —

I should have troubled your Excellency with this [resignation] some Time ago, had it not been that I was determined to seek vengeance on the Refugees and Tories of this Country (thro' whose means many Friends to the Country, with myself became sufferers) which, thank God with the assistance of Colo. Dabney, have pretty well effected.²

A number of loyalists in Princess Anne and the neighboring counties suffered arrest and imprisonment. Various offenses were charged — bearing arms against the country, forcing persons into the British service, and other treasonable practices. In Norfolk County the patriots imprisoned four men, "for going with the enemy"; and seven others were each bailed in one thousand pounds specie to appear before the council to answer the charge of disaffection. Similar measures were taken in other counties. Besides arresting Tories, the patriots seem to have subjected them to minor annoyances. The ill-fated Ralph

¹ *Calendar of Virginia State Papers*, II, 593.

² *Ibid.*, II, 611.

Wormeley declared that troops had been quartered on his estate in King William over a year and had maltreated his overseer.

The government, thinking that examples were needed in the southeastern neighborhood, issued special trial commissions for Nansemond, Isle of Wight, Norfolk, and Princess Anne, but men could not be found willing to act as judges, probably because of the danger to which they might be exposed in a country still glowing with the passions of war.¹ The council, on finding its efforts to establish a special court of large powers vain, ordered offenders tried in the ordinary way. But there was one serious objection to such a process; capital offenses including treason were tried, in the normal course of law, by the general court in Richmond and it was difficult to transport a great cloud of witnesses thither. Traitors there were in Norfolk, enough and to spare, "all taken up here and sufficient proof to hang many of them if the Court was to set here, but the witnesses have not money to bear their expenses to Richmond, and the most atrocious villians will escape by it (even murderers) if the public cannot provide some way of carrying the people up . . . if these escape adieu to all order and Government in these parts. Some came to Princess Anne court with clubs a few days ago, but by spirited exertions they were quel'd." ² Difficulty of procedure thus stalled the efforts at prosecution. Plainly, it was impossible to try a large number of offenders at Richmond and just as impossible to try them in special courts when such courts could not be organized. It is true that John Scarborough Wills paroled one John Harrison, who

¹ *Calendar of Virginia State Papers*, III, 14, 15.

² *Ibid.*, III, 101.

had been in the hands of the British, until the meeting of the special commission for the southeastern counties, but this was simply a cautionary manner of discharge. According to Harrison's account, he had been forcibly carried off by the British as a guide, a plea commonly urged by suspects arrested for having intercourse with the enemy; there was just sufficient truth in the defense of compulsion to make it difficult to decide whether a man was a traitor or only a weak-kneed patriot. The council now abandoned all thought of bringing offenders to justice on a large scale. In January, 1782, it even allowed John Saunders, a convicted traitor whose life had been spared on condition of working two years in the lead mines, to remain on his own plantation in Louisa.

Some offenses, however, were too serious to be passed over without making the government seem weakly lenient. Such cases came before the general court, which began treason trials at the April, 1782, session, when Robert Smith, of Hampshire, and James Hughes, of Henrico, were sentenced to death. Smith, if he may be believed, was in no sense a loyalist, but took up arms in the Hampshire rising in order to obtain relief from oppressive taxes. The governor pardoned four Hampshire rioters, who, in conformity with the assembly's pardoning resolution of June, 1781, had not been tried; and pardons were also given a number of other Hampshire insurgents in prison.

Smith and Hughes, the condemned traitors, were still in jail awaiting execution when the general court, in June, 1782, likewise passed capital sentence on James Lamb, Joshua Hopkins, and John Ripley, of Henrico. In Lamb's case the court advised executive clemency, stating that he

had been "convicted upon satisfactory evidence of the overt act of Treason charged in the Indictment; but it appeared in the course of the Evidence that the Criminal was actuated in this Conduct, rather from resentment against a party of men who belonged to a Boat called the Dasher and who had committed sundry unwarrantable outrages, on the persons and property of the Citizens of this State within the Enemies lines, than from a desire to assist the Enemy."¹ Lamb had joined a party of refugee loyalists in taking one Nathaniel Davis prisoner. At his trial he attempted, unsuccessfully, to show that he had been forced into the enemy's service,² for this defense had become rather threadbare by this time. Lamb, Hopkins, and another condemned prisoner, one Caton, applied for pardon to the House of Delegates, which passed a resolution to that effect. The senate, however, failed to concur, and the three traitors remained under sentence almost to the date set for execution.

The general court, at the October, 1782, session, sentenced to death Albrington Holland, John Holland, Levi Moore, Dempsey Butler, and Henry Norfleet, all of Nansemond, and William Hill, of James City, and acquitted Benjamin Bucktrout, of York.³ But the court in all these treason cases acted not without thought of final clemency, allowing the condemned an unusually long time before death. The latter now united in a petition for pardon. They admitted their guilt, but according to their account, which is probably true, they had joined the enemy because of the despondency prevailing in southeastern Virginia in

¹ Executive communications, 1782.

² Legislative Petitions. Princess Anne.

³ *Calendar of Virginia State Papers*, III, 361.

regard to the American cause, especially among the lower classes. Later on they had left the British and taken arms against them, but this circumstance had not protected them from indictment though it may have had some influence on the success of their plea for mercy.¹

The case of William Hill, one of the convicted, illustrates the temptations to which the poorer people were exposed during the British invasion. When the royal troops left Williamsburg, Hill happened to be looking for two stray cows and was accosted by a cavalryman, who insisted on his accompanying him and giving information as to the position of Lafayette's army. Hill refused, but the soldier carried him to a brandy-shop, made him drunk, and went home with him. His conduct had been observed and several patriots came to his house to arrest him; he escaped and lay in hiding in the woods for six weeks. Patriots came repeatedly to his home seeking him and hacked his horses with their swords. Finally, Hill, finding the chase growing warm, attempted to pass over into Isle of Wight, but could not cross the James at Burwell's Ferry. He fell into the hands of a party of British and was released, only to be taken in turn by Lafayette, who tried him and likewise set him free. In contradiction of his story, however, one of the witnesses testified that Hill had enlisted in Tarleton's legion.²

Prosecution for treason was dying out with the war. The general court, in December, 1782, tried, but failed to convict Adam Levitt, of Princess Anne, and Henry Burgess;³ and in January, 1783, it considered the case of Isaac

¹ Legislative Petitions, Nansemond (B3813).

² Executive communications, 1782.

³ *Auditor's Journal*, xv, 579.

Riddle apparently the last treason trial of the Revolution in Virginia. Mercy, in truth, followed hard on the heels of justice. The assembly, in the fall of 1782, pardoned Albrington Holland, Henry Norfleet, John Caton, and Levi Moore on condition that they serve a year in the Continental army; and James Lamb and Joshua Hopkins, provided they left the State within two months, to return no more during the war. Dempsey Butler, the murderer of Nott, was also pardoned at the same time.¹ If any man deserved death it was Butler, who, though a citizen of the State, had shot down in cold blood a Virginia officer while in pursuit of duty, and it appears that the assembly acted over-leniently in letting him go. But it probably thought that severity in individual cases was out of place where there had been so many offenders, and that mildness would best heal the wounds of the war-worn community. In May, 1783, it pardoned John Holland, seemingly the last man under sentence of death. Edmund Tallon had been a fellow prisoner under the same sentence to a late date.

Popular feeling against Tories did not die down as quickly as governmental resentment; it long outlasted the war. All through 1782 patriots were inclined to retaliate for injuries, and the troops continued to make impressments, which had been justified before by the gravity of the crisis, but which were always a most vexatious burden on the people. Needless to say, such seizures bore hardest on reputed loyalists. At length John Lowry, of Elizabeth City, ventured to sue Colonel Dabney for impressing four cows belonging to him. The military promptly retaliated. Lowry was arrested and tried and his plantation was

¹ Hening, *x*i, 129.

plundered. On receiving his complaint, Harrison, the governor, ordered Dabney to remove his soldiers from Lowry's house, declaring his intention of protecting citizens from the violence of the troops, whose presence in the district was, however, necessary because some of the people continued to supply the enemy with cattle.¹ Other Tories were likewise annoyed by the troops, but cases of violence seem to have been rare.

Depredations of soldiers on the property of Tories and half-hearted citizens were possibly stimulated by the continuance of hostilities on a small scale along Chesapeake Bay throughout the year 1782. Water-thieves and privateers swarmed in as great numbers as a year before when the chances seemed to favor the British cause. The ruin of the Virginia navy in 1781 permitted this state of warfare to continue long after it should have ceased; it ended only with the actual declaration of peace. Chief among the ravagers was a Scotchman who had adopted the appropriate name of Kidd, and who swept the Chesapeake waters with a flotilla of small craft called barges and manned partly by British seamen and partly by Maryland and Virginia Tories, outlaws, and runaway slaves. These pirates plundered and burned out-of-the-way houses along the shore and committed outrages on the inhabitants. At length, in November, 1782, Commodore Whaley, of Maryland, sallied forth against Kidd with a fleet of small craft similar to his, but being short of hands, put into Onancock Creek in Virginia for recruits. It happened to be court-day in Accomac and a crowd of people had gathered at the court-house, among them John Cropper, the county-

¹ Letter-Book (1781-82), 251.

lieutenant, who had been a noted officer in Washington's army. This man raised a considerable force of volunteers on the spot and added a boat to the fleet. The commodore then ventured out into the Bay in search of Kidd, whom he ran across off Tangier Island just south of the line dividing Virginia and Maryland. Both fleets were composed of barges, boats especially built for shallow navigation and fitted out with sails and oars and carrying guns of fair size. Whaley, who was a better fighter than strategist, sailed ahead of his other barges in the Protector, and ardently attacked Kidd's whole fleet single-handed. The enemy concentrated their fire on this vessel, with the result that she blew up, but not until she had succeeded in sinking four British barges. This accident decided the engagement. Whaley was killed, and Cropper, badly wounded, fell into the enemy's hands with the other survivors of the Protector. The "Battle of the Barges," or Cagney's Strait,¹ ended the warfare which had been going on in these accessible waters ever since Dunmore's attack on Hampton in 1775.

The closing months of the war witnessed one of its saddest phases — the forced exile of British subjects still remaining in the State, and the barring-out of the poor refugees who had begun to return from New York and other places on the approach of peace. Many loyalists with Cornwallis at Yorktown attempted to remain after the surrender, and others used various artifices to gain entrance to the State. Business in one form or another served as an excuse for many merchants or agents anxious to find

¹ *Southern Literary Messenger*, xxiv, 215-21. Cropper had been Morgan's second in command and had won a great reputation.

admittance, and no doubt some of them managed to evade the law. Others failed, as did James Riddell, a former Yorktown merchant, who had been taken prisoner and allowed to go to New York on parole, but returned in April, 1782, to collect debts. On his arrival in Yorktown he was promptly ordered back on shipboard, possibly because he was a loyalist, possibly because he was a bill-collector.

The government was much readier to grant permission to leave Virginia than to enter it, and a good many loyalists who had held out to the last seem to have gone off to British posts. William Andrews, a minister notorious for disaffection, applied for a passport to leave the State, "where my conduct has been lately obnoxious." He complained that he, as well as a colleague named Bruce, had suffered unjustly in being accused as hostile, because the presence of the British at Portsmouth had necessarily made the whole population of the region appear lukewarm towards the patriot cause.¹ Andrews had been tried for treason, but had not been convicted, and the council finally granted him permission to leave the State with his family and several friends on condition that they did not return. Later on, however, the two ministers came back to Norfolk and resumed their professional labors without interference. Others also occasionally managed to return. The widow of James Hubbard, who had been allowed to go without proper authority from Williamsburg to New York to see her dying husband, asked leave to come back. The council granted Esther Muir permission to go to New York with her children, on condition of never returning.²

¹ *Calendar of Virginia State Papers*, III, 139.

² *Council Journal* (1782-83), 4.

Constant attempts at evasion of the laws forbidding intercourse with the enemy and the residence within the State of British subjects annoyed the government. British shipmasters and merchants were the chief offenders. Thomas C. Williams, captain of a flag-of-truce brigantine lying at Yorktown, went to Richmond without permission on pretext of asking leave to stay in Virginia to settle accounts arising from transactions made at the time of Cornwallis's surrender. The council thereupon ordered Williams to return to his ship and immediately sail for New York on penalty of having it seized and of suffering imprisonment. Exasperated by this and similar incidents, Benjamin Harrison, the governor, on February 4, 1782, ordered British merchants remaining in Virginia under the terms of the surrender to wind up their affairs and those who had overstayed their leave to sail for New York. Many Britons managed to escape the order. Harrison, on May 22, 1782, directed the Surry militia commander to require all British merchants in his county to go without delay to Hampton to take ship for New York.¹ The governor, in July, 1782, sharply reprovved William Mitchell, flag-of-truce officer at Yorktown, for allowing the British brig *Alexander* to go to Norfolk to buy slaves and refit.

Congress added to the embarrassments of the Virginia government in attempting to rid the State of enemies by entering into an agreement with British merchants in New York to supply them with tobacco. Virginia, of course, had to furnish the commodity, and the British ships that were to carry it put into Hampton. Harrison applied to the assembly to know whether an agreement so dangerous as

¹ *Council Journal* (1781-82), 70.

the opening of trade with the enemy should be carried out;¹ the government eventually allowed the tobacco to be exported under rigid conditions. When a vessel flying the white flag sailed up the James River from Hampton, Harrison put a guard of troops on board her to prevent traffic with the people. Such precautions were necessary, as the State teemed with Englishmen and refugees in spite of all efforts to drive them out. Harrison ordered the commanding officer at Portsmouth, in September, 1782, to seize John McLean, a British subject, and deport him to New York; and sent out similar orders to other commanders. The smuggling-in of refugees in flag-of-truce ships finally grew to be such an annoyance that Harrison applied to the attorney-general, Edmund Randolph, to know whether ship-captains could be proceeded against for the offense, and received a negative reply.

The assembly at the fall session of 1782 attempted to remedy the evil by passing an act prohibiting intercourse with British subjects and forbidding their admission to the State.² This act required special leave from the governor before the opening of any communication with a flag-of-truce, on pain of fine and imprisonment. British subjects coming into the State, unless shipwrecked, and British subjects who had come in after January 1, 1782, and had not become citizens, were to be held as prisoners. Harrison had secured this law in his determination to prevent the influx of undesirable foreigners and Virginia refugees, who grew more and more insistent in their efforts to gain entrance as the war visibly wore away. The governor wrote Benjamin Grymes in August, 1782, concerning one

¹ Letter-Book (1781-82), 137.

² Henning, xi, 136.

Nicholls, for whom Grymes had interceded, that he had no doubt Nicholls was a worthy man, but that even if the law allowed one connected with the enemy to become a citizen he could not receive him because of the swarm of similar applications sure to follow. The council, in September, 1782, advised the governor to refuse all future applications of British subjects to be allowed to stay in the State,¹ and such appeals were rejected. Dr. Middleton, a former surgeon in the American army who had accepted British protection, was not only refused leave to remain, but was guarded until he left Virginia. The governor, on December 19, 1782, issued a proclamation ordering civil magistrates, county-lieutenants, and militia officers to arrest all British subjects within their jurisdiction. A number of such persons, he declared, continued in the State because of the mistaken indulgence of local civil and military authorities and might establish a Tory party and alienate the people from the government.

When the war finally came to an end in 1783, refugees fairly plied the government with applications for permission to return. Now that the British were no more enemies, even after the apathetic fashion of 1782, the exiles stood on a different footing; they were no longer possible spies and belligerents. Many had made themselves obnoxious to the patriot government, but they hoped for indulgence notwithstanding this. Among them were John Wormeley, of the well-known loyalist family, Dr. Alexander Gordon, of Norfolk, and John Goodrich, Jr. The government allowed Mrs. Goodrich to come back to Virginia with her children, but forbade her husband's landing. He had sinned too

¹ Letter-Book (1781-82), 250.

deeply for forgiveness. John Wormeley, who had served as an officer in the British army, gained leave to remain at Yorktown until the next ship sailed for New York. He expressed a desire to become a citizen, but the council, while admitting that he was not literally a traitor, since he had never taken the oath of allegiance to the State, viewed him in another light than that of an ordinary enemy. Dabney, the officer commanding at Yorktown, let Wormeley go into the country for a visit,¹ for which imprudence the governor reprimanded him. Ralph Wormeley, the father, then petitioned the assembly to admit his son to citizenship. The young man, so he said, had been in Scotland for a mercantile education before the breaking-out of the war. Forced by the cutting-off of home remittances at the beginning of hostilities to return to America, he entered the British army in New York and saw service in South Carolina, where he married. The usual plea of kindness to American prisoners in New York was advanced in his behalf.² At the same time, Presley Thornton, who had likewise been sent to England for an education and had accepted a commission in the British army, asked leave to become a citizen. The assembly admitted Wormeley, Thornton, and another applicant, Philip Turpin, on taking the oath of allegiance, expressly excluding Wormeley, however, from holding any office for four years.

The people were less tolerant of unpopular refugees than the government, which had begun to relax immediately at the end of the war. Mob violence occasionally attended the appearance of a loyalist venturing back in the hope

¹ *Council Journal* (1782-83), 297.

² Legislative Petitions. Westmoreland.

that peace settled all scores. Thomas Hepburn, who had left Virginia early in 1776, attempted to resume his residence at Port Royal and was waited on by a self-constituted committee of citizens and informed that he must leave the State. A meeting in Petersburg in 1783 urged the government to enforce the law forbidding refugees and British subjects from settling in Virginia, and a petition went to the assembly from Essex in May, 1783, opposing the return of loyalists. Probably some mobbings occurred of which we have no account. The best-known case of violence offered a returned refugee was that of Joseph Williamson, in October, 1783. Williamson had once been a merchant at Tappahannock, but went over to the British, and attempted, it is said, to bring tenders up the Rappahannock to burn the town. After the war the council granted him permission to return, and he brought a cargo of goods to Tappahannock for sale, but in spite of his official sanction a mob tarred and feathered him after he had ignored a warning to leave.¹ The council, irritated by this outrage in defiance of its authority, ordered a prosecution in the general court. The participants appealed in great alarm to their representative in the legislature, Spencer Roane, who secured for them an act of immunity.

Such deeds of violence as the mobbing of Williamson were rare in Virginia, which, unlike almost all the other States, had been only to a slight degree the scene of inter-party warfare. The great mass of the population had no such humiliations and injuries to revenge on Tories as had the people North and South; in fact, the loyalists in Vir-

¹ *Council Journal* (1782-83), 290.

ginia were much more sinned against than sinning. Consequently it is not surprising that the level-headed Virginia assembly in the fall of 1783 magnanimously repealed the laws forbidding Tories to return to the State, with the exception of those who had taken an active part in the war. Prohibition of intercourse with British subjects was likewise and as a matter of course withdrawn. The repeal did not pass, however, without opposition. Anti-loyalist feeling was strong enough to array a considerable part of the legislature against measures of toleration, but Patrick Henry pleaded the cause of the exiles in one of his best speeches and carried the day.¹ It was fitting that the great agitator who had done so much to bring on the Revolution should close it with a plea of mercy for his defeated opponents.

A good many peaceful exiles who had fled abroad, or had been driven out of the State during the course of the war, now returned in the hope of recovering their forfeited estates. Most of them were doomed to disappointment, though sometimes a child or other relative received what had been taken from the loyalist *émigré*. There were other cases like that of Alexander McCall, of Essex, who had gone abroad in 1775 and had not returned within the two-year limit allowed by the Virginia government, with the result that his own estate was confiscated and that of his infant daughter jeopardized by her absence in England. The assembly, when appealed to, decided that Catherine McCall might claim the estate if she returned within the legal period.² While a number of refugees returned and

¹ Henry's *Patrick Henry*, II, 192-96.

² Legislative Petitions. Essex (A5351).

some new citizens came in from the British Isles, the great majority of the hundreds of men who had gone away on account of the war never came back. In actual numbers Virginia lost less heavily than the other States, but at that she lost nearly the whole of her mercantile class. In a purely agricultural community, much exhausted by the war and greatly depleted by emigration to Kentucky, the loss was irreparable, and from this time Virginia, which before the Revolution had been one of the least provincial of colonies, began to narrow in her interests and life.

A last and most vexatious question remained as the direct heritage of the Revolution. The Treaty of Paris, among other concessions, granted British debtors the right to recover debts in the United States, while, on the other hand, Great Britain agreed to assist slave-owners in recovering runaway and kidnapped slaves. Immediately after the conclusion of peace, several Virginians went to New York to secure lost slaves, but received small encouragement from the authorities, and this cool attitude of the British was generally resented by planters. At the May, 1784, session of the assembly, Madison and Richard Henry Lee, mindful of treaty rights, attempted to repeal the legislation still barring the recovery of British debts. Henry opposed them, however, and induced the legislature to declare that it would not repeal the prohibitory laws until England made reparation for breaking the treaty in regard to runaway slaves. The English government retaliated by refusing to surrender the Lake ports to the Americans. When the Virginia legislature reassembled in October, 1784, the question came up again and a bill providing for the payment of British debts in installments was debated,

but failed by a small margin.¹ The matter of debts had now become serious, since the refusal of Virginia and other States to allow recovery suits had given England an excellent pretext for continuing to hold the Western posts and foster designs upon the great territory which is now the Middle West. Congress appealed to the States to repeal legislation barring the treaty fulfillment, and in October, 1787, George Mason and George Nicholas offered a repeal bill in the Virginia assembly, but Henry, the determined advocate of the debtors, again defeated a measure so generally obnoxious. The Constitution of 1787 ended such efforts of States to nullify treaties, and a number of suits were brought by British merchants in the federal court in Richmond when it opened for business in 1790. The defendants employed John Marshall and Patrick Henry, who had effectively championed their cause from the beginning. Henry, by his genius and personal influence, managed to hold off decision in several cases until 1794, but in the end a number of suits were instituted and a good many judgments secured. The debts recovered were but a "drop in the bucket" of the liabilities standing against the Virginia planters in 1775, and the end of procedure found the British creditors a generally defeated class. It could not well have been otherwise. Virginia, after the terrible drain of war, was in no condition to discharge claims which would almost have bankrupted her in the days of her colonial prosperity. For many people the canceling of debts was the practical benefit conferred by the Revolution.

¹ Henry's *Patrick Henry*, II, 233.

CHAPTER XII

THE PROGRESS OF DEMOCRACY

THE treaty of peace removed the external danger of conquest, but it was the signal for the renewal of the political contest which had been going on in Virginia ever since 1765 and which had reached a climax in 1776. The pressure of war and the necessity of suppressing Toryism had prevented violent party divisions after that year, though in 1779 the conservatives took advantage of Jefferson's removal from the assembly to attempt a partial restoration of the established church, and in 1781 they obtained control of the governor's office when Jefferson's failure as a war executive became evident.

The restoration of peace removed the restraint which the need of harmonious action in a time of crisis had placed upon the two wings of the patriot party. At last conservatives and democrats might fight for the mastery without fear of outside complications. They might now decide whether the social revolution that had begun in 1776 should go further, or whether the Old Dominion should revert to the conditions of the colonial period. If Jefferson had retained his popularity and the active leadership of the democratic party, it is not likely that the conservatives would have felt themselves strong enough to attempt reactionary legislation, but Jefferson was living abroad in eclipse and the conservative party, in his absence, was stronger than its rival.

Several circumstances combined to brighten the outlook for the conservatives in 1784, when the contest began. Although a number of western counties had been created during the war, the conservatives still held control of the tier of small tidewater counties, and as counties were equally represented in the House of Delegates, the eastern section had as many members as the populous central and western districts. Then again, the conservatives counted on their side the most influential leaders. Some of them were of the planter type, like John Tyler and Benjamin Harrison, while others were brilliant young lawyers such as Henry Tazewell and John Marshall, the future Chief Justice. Towering above these stood Patrick Henry and Richard Henry Lee, who were now opposing the Revolutionary development as warmly as they had advocated the Revolution itself in 1775. Henry and Lee fought each other for the leadership of the assembly from 1782 to 1784 and then joined hands in an effort at a conservative restoration. They were rivals, but they had much in common besides their hatred of Jefferson.

As it chanced, religion was the issue on which the struggle turned. The Anglican Church had been well-nigh ruined by the loss of tithes and the upheaval of the war, but the planters were still mainly Anglican in belief and they had come to appreciate the value of the church as a social bulwark. Formerly dissenting communions like the Presbyterians and Baptists had also rather lost than gained by the war, while freethinking abounded. Indeed, democracy more and more tended to be associated with unbelief and hostility to organized worship. Jefferson himself shared this rather superficial skepticism, which flourished

like a green bay tree in Virginia in the last decades of the eighteenth century and then withered suddenly and completely early in the nineteenth. In making their stand on the religious question, the conservatives were combating at a vital point the leveling principle now beginning deeply to influence the illiterate masses throughout the State.

At that time probably none of the American States had absolutely severed political and religious connection; certainly New England had some distance to go before reaching religious liberty. Many serious-minded men felt that Virginia had ventured far enough in the direction of liberalism and that faith itself was endangered. Consequently, strong support arose for the movement to reestablish state patronage of religion when the end of the war once more allowed men to turn their minds towards internal matters. There was no question of the restoration of the Anglican communion as the single state church, for the Presbyterians and Baptists were too numerous to make such a thing possible. But it was practicable to lay a tax on property for the general support of religion and to apportion the proceeds among the various churches; and it was in this form that Henry presented the question to the assembly when it met in Richmond for the May, 1784, session.

The spring debate was preliminary. At the fall meeting of the assembly a resolution approving an "assessment," or tax for religious support, passed the House of Delegates, and a bill levying such a tax was introduced and fiercely debated.¹ On this occasion Patrick Henry was opposed by James Madison and George Nicholas, who had taken the leadership of the democratic party. Both of them clearly

¹ *Separation of Church and State in Virginia*, 85.

realized the danger to individualism involved in such a paternal measure as the religious assessment; they fought it with determination and energy. Nevertheless, Henry had a small majority in both houses, and the bill would have passed if the orator had not accepted another election to the governorship at the critical moment, November, 1784. We do not know the real reason for Henry's abdication of his leadership at the very threshold of decisive success. It is highly probable that his opponents wished to get rid of him by electing him governor, but he was too astute to be misled by an obvious ruse. Henry probably acquiesced in his election because he saw that any form of religious restraint would soon prove highly unpopular with the democratic majority in the State, and by becoming governor he was able to free himself from a dubious policy. At all events, with Henry out of the way, Madison succeeded in postponing final action on the assessment to the next meeting of the assembly.

Both sides now appealed to the people, and Madison wrote his noblest paper in advocacy of complete separation of church and state. His supporters worked feverishly through the central and southern counties in the summer of 1785 and to such effect that when the assembly met in the fall religious taxation was buried beneath a pyramid of adverse petitions.¹ Madison took advantage of the opportunity to bring forward Jefferson's Bill for Religious Freedom, which had been shelved since 1779. It passed without difficulty. Virginia thus became one of the first states in the world completely to divorce religion from politics.

¹ *Separation of Church and State in Virginia*, 109.

This victory of liberalism was quickly followed by a wave of democratic enthusiasm. The effort to halt the Revolution had failed; it was destined to go forward to its logical conclusion. In the same year, 1785, the first movement for the abolition of slavery arose in Virginia. It proved abortive, of course, but it is a proof of the progress of radicalism. In the following years democratic social and political ideas continued to grow, although there was still a strong conservative element in the tidewater.

The struggle over the adoption by Virginia in 1788 of the United States Constitution is not without its puzzling features. The westerners, the great upholders of individualism, generally opposed it, while the tidewater planters, who imagined they saw a hope for themselves in the centralizing tendencies of the Constitution, favored it. By such an apparent inversion of position as often occurs in politics, Patrick Henry led the anti-Federalists in the interests of States' Rights and democracy, and Madison became the successful leader of the Federalists. Henry made the most brilliant fight of his career on this occasion, but ratification was carried by a small majority and was distinctly a victory of the planter reactionaries.

The success of the Federalists was not followed by a conservative ascendancy in Virginia as in Massachusetts. The principles of democracy were too passionately held by the great majority of men in all sections of the State to allow a return to the rule of the planter oligarchy. As soon as it became evident that the new Union was no rights-of-man government, but a highly conservative political and social structure, discontent broke out among the Virginia democrats. Thus, when Jefferson retired from Washing-

ton's Cabinet he found the material existing for a party opposed to Federalist ideas, and he spent the next few years in its organization. In this manner the Democratic-Republican Party came into being.

The democratic impulse was immensely quickened by the French Revolution. Virginia, which had experienced a real contest between the forces of conservatism and liberalism, welcomed with enthusiasm the stimulating Gallican propaganda. Indeed, the Old Dominion was transformed thereby. It became the fashion in the North in a later age to sneer at the inconsistency of the Revolutionary generation in preserving the institution of slavery, though subscribing to the Declaration of Independence dogma that all men are created free and equal. This inconsistency is more apparent than real. That the statement was meant to apply in a political rather than a social sense, we all, of course, now understand; but it also had a very practical social application. The Revolution changed the attitude of the mass of Virginia people towards the negro race and the transformation lasted until the end of slavery. In the colonial era slaves were looked on as little better than brute beasts and were frequently treated with great cruelty. The law was absolutely callous, and a great number of poor blacks suffered execution for trifling thefts such as afterwards came to be good-naturedly looked on as a mere African weakness, or froze to death in jail awaiting trial; others were outlawed and killed on sight like wild animals. The records are full of these cases. But in this treatment of the blacks the Virginia people were in no sense more cruel than the rest of the world; it was the world, we must remember, in which men were hanged, drawn and quartered,

broken on the wheel and decapitated for comparatively trivial offenses, with an iron disregard for human suffering the present age cannot understand — the antediluvian world before the égalitarian deluge.

The Revolution changed all this. After 1785 a strong and persistent abolitionist sentiment existed in Virginia, and would probably have predominated but for the almost insuperable practical obstacles to emancipation. Popular feeling forced the government to permit private emancipation, which proceeded on such a scale that the institution of slavery was seriously threatened. The assembly intervened in 1816 to save it by requiring freedmen to leave the State within a year of manumission, and the practice of freeing slaves at the death of masters lessened.¹

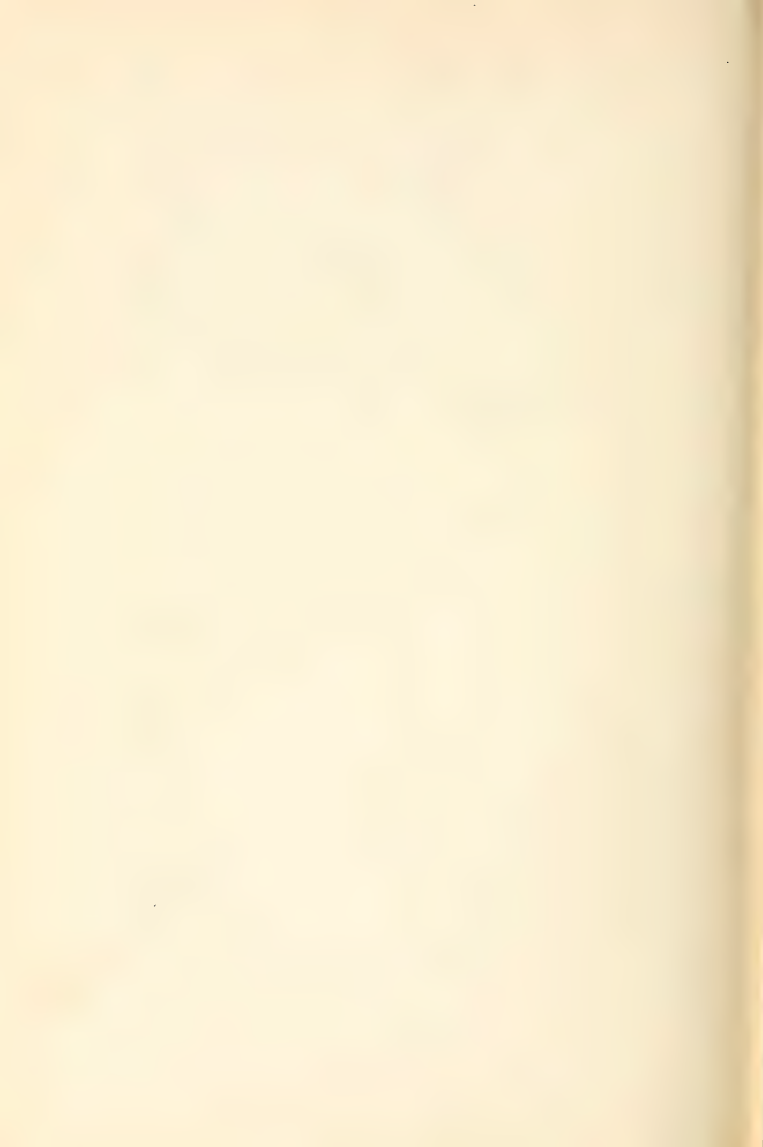
Gradually the democratic wave, which began in 1776 and reached high-water mark about 1795, spent its force. It had wrought great changes, but it was not destined to achieve a permanent triumph. Democracy in Europe had received a deathblow by the overthrow of Napoleon in 1815 and America felt the effect of the reaction. In Virginia other reasons contributed to the checking of liberalism. The development of the South and West drew from the Old Dominion its best young manhood and brought on a disastrous economic competition; Virginia lost rank as the greatest of American States and rapidly sank to a secondary position. It was no longer a land of energetic and forward-looking men, but of memories, a place of social amenities and soft dreaming. Under the influence of Sir Walter Scott's novels glorifying the feudal age, the new generation constructed in imagination a colonial past of

¹ J. H. Russell's *The Free Negro in Virginia*, 70.

splendor which had had small counterpart in reality. The old English and aristocratic spirit revived and existed alongside the democratic theories of government which Jefferson had introduced. Jefferson's name was revered while his influence dwindled.¹ Much, indeed, of the humanitarian teaching of the Revolution continued to permeate society and slavery was softened by this influence to the end, but the fact remains that in Virginia the swing-back from democracy was steadily increasing in momentum from the fall of Napoleon to the Civil War.

¹ W. E. Dodd's *Statesmen of the Old South*, 70.

THE END



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